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1. General Principles

§ 1371. Enforcement or protection of rights

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3450, 3460, 3736, 3746, 3770 to 3772

All citizens similarly situated are entitled to the same rights in the prosecution of suits to enforce or protect their rights.

All citizens, similarly situated as litigants, are entitled to the same rights with regard to actions to enforce their legal rights.[1] All that is required by equal protection is that similarly situated litigants be treated equally.[2] While a litigant is afforded equal protection if all in the same class are treated equally,[3] legislative classifications must conform to the equal protection guarantees of a state and the federal constitutions,[4] and a state may not impose additional burdens on a class of litigants in an arbitrary or capricious manner.[5] For instance, a statute providing that all causes of action or proceedings, real or personal—except actions for defamation—survive the death of the plaintiff or defendant violates equal protection since the preclusion of a cause of action for defamation when the defendant dies is arbitrary and bears no relationship to the statute's objective of allowing a victim compensation for an injury.[6] On the other hand, a statutory prohibition against corporations representing themselves does not violate a corporation's constitutional rights to obtain justice freely and to equal protection under the law since the prohibition against the unauthorized practice of law is a reasonable regulation in the public interest of orderly judicial administration.[7]

One is not denied equal protection by an adjudication in accordance with valid rules of law and practice.[8] There is no vested right in the decisions of a court, and a change of decision does not deprive one of equal protection.[9]

Footnotes

1 U.S.—Lee v. Habib, 424 F.2d 891 (D.C. Cir. 1970).
W. Va.—State ex rel. Payne v. Walden, 156 W. Va. 60, 190 S.E.2d 770 (1972).
Custody proceeding
A natural father has the right to equal protection in a custody proceeding.
Ala.—Wambles v. Coppage, 333 So. 2d 829 (Ala. Civ. App. 1976).

2 Iowa—Matter of Bishop, 346 N.W.2d 500, 16 Ed. Law Rep. 1373 (Iowa 1984).

3 **Effective date of dissolution statute**
Limiting a statute, which permits the modification of financial orders entered in a dissolution proceeding without regard to the prior contemplation of financial changes, to dissolution decrees entered after its effective date did not deprive a person, whose dissolution decree was entered before then of equal protection, since that party continued to receive the same treatment as every other member of the class.
Conn.—Darak v. Darak, 210 Conn. 462, 556 A.2d 145 (1989).

4 **Suits against government**
Wash.—Medina v. Public Utility Dist. No. 1 of Benton County, 147 Wash. 2d 303, 53 P.3d 993 (2002).

5 Mass.—Murphy v. Commissioner of Dept. of Indus. Accidents, 415 Mass. 218, 612 N.E.2d 1149 (1993).

6 Pa.—Moyer v. Phillips, 462 Pa. 395, 341 A.2d 441, 75 A.L.R.3d 741, 77 A.L.R.3d 1339 (1975).

7 Wis.—Jadair Inc. v. U.S. Fire Ins. Co., 209 Wis. 2d 187, 562 N.W.2d 401 (1997).

8 Pa.—In re Garrett's Estate, 372 Pa. 438, 94 A.2d 357 (1953).

9 U.S.—Sunray Oil Co. v. C.I.R., 147 F.2d 962 (C.C.A. 10th Cir. 1945).

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2. Access to Courts

§ 1372. Right of access to courts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3450, 3460, 3736, 3746, 3770 to 3772

The right of access to the courts is based on equal protection principles.

The right of equal access to the courts rests upon the constitutional guarantee of equal protection, among other constitutional rights.[1] An equal protection right of prisoners to access to the courts has been recognized[2] although certain requirements do not infringe this right.[3] The denial to an alien of access to the courts on the sole ground that the alien may be in violation of an immigration law is a denial of equal protection.[4] However, where a claim involves a right that is not entitled to any special constitutional protection, the right of access to the courts may be restricted if there is a rational basis for the distinction.[5]

CUMULATIVE SUPPLEMENT

Cases:

A dismissal-with-prejudice sanction does not categorically deny access to courts that is guaranteed by the Florida Constitution. Fla. Const. art. 1, § 21. In re Deepwater Horizon, 922 F.3d 660 (5th Cir. 2019).

Oklahoma highway contractor that had entered into contracts with the Arkansas State Highway and Transportation Department (ASHTD) lacked standing Article III standing to bring equal protection claim against ASHTD officers and the Arkansas State Highway Commission, alleging that Arkansas State Claims Commission made a favorable ruling on "an almost identical" claim by an in-state contractor based, in part, upon the state of origin of the claimant and the size of the claim, given that contractor failed to sue the Claims Commission or its members, and failed to allege that defendants influenced, or had the authority and ability to influence, the Claims Commission's adjudication of contractor claims against the state, and because defendants had no control over the Claims Commission's practices, they had no powers to redress the injuries alleged. U.S.C.A. Const. Art. 3, § 2, cl. 1; U.S.C.A. Const.Amend. 14. Duit Const. Co. Inc. v. Bennett, 796 F.3d 938 (8th Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Limone v. U.S., 336 F. Supp. 2d 18 (D. Mass. 2004).
Cal.—In re Armstrong, 126 Cal. App. 3d 565, 178 Cal. Rptr. 902 (1st Dist. 1981).
Iowa—Gleason v. City of Davenport, 275 N.W.2d 431 (Iowa 1979).
Ohio—Leiberg v. Vitangeli, 70 Ohio App. 479, 25 Ohio Op. 211, 47 N.E.2d 235 (5th Dist. Stark County 1942).

2 U.S.—Cornett v. Donovan, 51 F.3d 894 (9th Cir. 1995), as amended (May 23, 1995).
Fundamental interest
An indigent inmate's right of access to the courts is derived from the Due Process and Equal Protection Clauses, but the constitutional right of access to the courts in a civil action is not absolute or unconditional except in limited cases where the litigant has a fundamental interest at stake.
Kan.—Smith v. McKune, 31 Kan. App. 2d 984, 76 P.3d 1060 (2003).

3 **Filing information about litigation history**
U.S.—Hicks v. Brysch, 989 F. Supp. 797 (W.D. Tex. 1997).

4 **Divorce courts**
U.S.—Williams v. Williams, 8 V.I. 244, 328 F. Supp. 1380 (D.V.I. 1971).
Exhaustion
Territorial statutes requiring nonimmigrant alien workers to exhaust administrative remedies before suing on wage and hour claims, while allowing U.S. citizens and permanent residents to sue for those violations directly, violate equal protection since no rational basis was advanced for abrogating right of access to courts by nonimmigrant alien workers.
U.S.—Yang v. American Intern. Knitters Corp., 789 F. Supp. 1074 (D. N. Mar. I. 1992).

5 U.S.—Woods v. Holy Cross Hospital, 591 F.2d 1164 (5th Cir. 1979).
N.Y.—Sisario v. Amsterdam Memorial Hosp., 159 A.D.2d 843, 552 N.Y.S.2d 989 (3d Dep't 1990).

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2. Access to Courts

§ 1373. Actions involving Native Americans

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3450, 3460, 3736, 3746, 3770 to 3772

Native American sovereignty may override a right to access to state courts.

The right of access to a state court may be denied to Native Americans where the denial is not based upon invidious racial discrimination but on the quasi-sovereign nature of the tribe.[1] A state's interest in requiring that all its citizens equally bear the burdens and benefits of access to its courts is overridden by a federal interest in Indian self-government.[2] Thus, a statute requiring that a state assume jurisdiction over Native Americans and Native American territory within the state, except that in certain subject areas, jurisdiction may not extend to Native Americans on trust or restricted lands, without the request of the Native American tribe affected, does not offend the Equal Protection Clause.[3] A conclusion that a tribal court should exercise exclusive jurisdiction over an action arising out of an incident occurring on an Native American reservation and between tribe members is also not a denial of equal protection.[4] Similarly, a non-Native American husband's equal protection rights were not violated by a determination that a state court lacked jurisdiction to issue orders concerning the custody and support of children the husband had with a Native American wife, as the husband and wife were married on a reservation and resided there with the children, and jurisdiction was thus in the tribal court.[5]

Footnotes

1 S.D.—Matter of Guardianship of D. L. L., 291 N.W.2d 278 (S.D. 1980).

2 U.S.—Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, 476 U.S. 877, 106 S. Ct. 2305, 90 L. Ed. 2d 881 (1986).
As to federal and state court jurisdiction over actions involving Indians, see C.J.S., Indians §§ 16, 17, 66, 68.

3 U.S.—Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979).

4 Wyo.—State ex rel. Peterson v. District Court of Ninth Judicial Dist., 617 P.2d 1056 (Wyo. 1980).

5 N.D.—Byzewski v. Byzewski, 429 N.W.2d 394 (N.D. 1988).

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§ 1374. Available forum; arbitration

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3450, 3460, 3736, 3746, 3770 to 3772

Equal protection does not require access to a particular forum, and arbitration may be required consistent with equal protection.

The constitutional guarantee of equal protection of the law guarantees fundamental rights and not the mere forum in which those rights are to be enforced.[1] For instance, statutes or court rules requiring that certain claims be submitted to court-annexed arbitration may further a legitimate governmental objective of providing a procedure for obtaining a prompt and equitable resolution of certain types of actions, and do not violate equal protection,[2] even where claims under a certain amount must be submitted to arbitration,[3] or such a statute applies, on a temporary basis, only in some court districts.[4]

Footnotes

1 Ky.—Hummeldorf v. Hummeldorf, 616 S.W.2d 794 (Ky. Ct. App. 1981).
Okla.—Phillips Petroleum Co. v. Smith, 1936 OK 560, 177 Okla. 539, 61 P.2d 184, 107 A.L.R. 858 (1936).

2 Haw.—Richardson v. Sport Shinko (Waikiki Corp.), 76 Haw. 494, 880 P.2d 169 (1994).

3 Colo.—Firelock Inc. v. District Court In and For the 20th Judicial Dist. of State of Colo., 776 P.2d 1090 (Colo. 1989).

Ga.—Davis v. Gaona, 260 Ga. 450, 396 S.E.2d 218 (1990).

4 Colo.—Firelock Inc. v. District Court In and For the 20th Judicial Dist. of State of Colo., 776 P.2d 1090 (Colo. 1989).

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2. Access to Courts

§ 1375. Jurisdiction; forum non conveniens

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3375, 3376, 3450 to 3453, 3460, 3736, 3746, 3770 to 3772

A statute establishing and regulating the jurisdiction of a court is not a violation of equal protection unless it discriminates as to citizens who may resort to the court.

The equal protection guarantee does not deprive the states of their power to prescribe the nature and extent of the jurisdiction of their courts.[1] Thus, a state, consistent with equal protection, may specify the courts that may hear tort claims against the State.[2] Concerns about improper forum shopping do not provide a basis for an equal protection challenge to the county-wide jurisdiction of municipal courts in criminal matters[3] although that jurisdiction may violate the equal protection rights of county residents who are subject to the municipal court's territorial jurisdiction but not enfranchised to elect the municipal judge.[4]

A refusal to exercise jurisdiction under the doctrine of forum non conveniens is not a denial of equal protection.[5] A statute may require the dismissal of certain claims by out-of-state plaintiffs on the basis of forum non conveniens, instead of retroactively validating their claims, without violating equal protection where the legislature believed that state residents were being denied access to state courts because of the backlog of cases caused by nonresidents' forum shopping.[6] Conversely, a provision of a

forum non conveniens statute that precludes the dismissal of actions arising in a jurisdiction other than the forum state does not violate equal protection even though actions arising within the state may be transferred to a different venue.[7]

A statute permitting the exercise of personal jurisdiction over a nonresident who has an interest in, uses, or possesses real property in the state does not violate equal protection.[8] The equal protection rights of a foreign corporation are not violated by a statute that confers jurisdiction over a foreign cause of action against a nonresident corporation doing business in the state where the statute applied equally to foreign and domestic corporations.[9]

Equal protection is not denied where local proceedings involving child custody were stayed because jurisdiction rested elsewhere, pursuant to the Uniform Child Custody Jurisdiction Act, where the other state's forum remained open, and the local forum would reopen if the other party failed to proceed in the other state.[10]

CUMULATIVE SUPPLEMENT

Cases:

Rational basis review, rather than strict scrutiny, applied when analyzing whether exclusion for defamation actions against certain foreign defendants in Connecticut's long-arm statute violated former employee's equal protection rights, in his defamation action against, inter alia, his foreign former employer and its foreign publicist, since, in absence of long-arm statute providing for jurisdiction over specific foreign defendants, employee did not have fundamental right to bring action against such excluded foreign defendants, and state residents allegedly defamed by foreign entities were not suspect class. U.S. Const. Amend. 14; Conn. Gen. Stat. Ann. § 52-59b. Friedman v. Bloomberg L.P., 884 F.3d 83 (2d Cir. 2017).

Exclusion for defamation actions against certain foreign defendants in Connecticut's long-arm statute did not violate former employee's equal protection rights, in his defamation action against, inter alia, his foreign former employer and its foreign publicist, since such special protection to foreign defendants in defamation actions was rationally related to avoiding any unnecessary inhibition on their freedom of speech. U.S. Const. Amends. 1, 14; Conn. Gen. Stat. Ann. § 52-59b. Friedman v. Bloomberg L.P., 871 F.3d 185 (2d Cir. 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—New York State Ass'n of Trial Lawyers v. Rockefeller, 267 F. Supp. 148 (S.D. N.Y. 1967).
Mo.—State ex rel. Schlueter Mfg. Co. v. Beck, 337 Mo. 839, 85 S.W.2d 1026 (1935).
Attachment in chancery
Chancellor's taking jurisdiction of personal injury suit against railroad on basis of attachment against foreign corporation did not violate the Equal Protection Clause even though the defendant foreign corporation was domesticated in the state and despite the contention that, as a result, it was, for all intents and purposes, a resident corporation.
Miss.—Louisville & N. R. Co. v. Hasty, 360 So. 2d 925 (Miss. 1978).

2 Ill.—Mora v. State, 68 Ill. 2d 223, 12 Ill. Dec. 161, 369 N.E.2d 868 (1977).

3 Ark.—State v. Webb, 323 Ark. 80, 913 S.W.2d 259 (1996), opinion supplemented on other grounds on denial of reh'g, 323 Ark. 80, 920 S.W.2d 1 (1996).

4 Ark.—State v. Webb, 323 Ark. 80, 920 S.W.2d 1 (1996).

5 Okla.—St. Louis-San Francisco Ry. Co. v. Superior Court, Creek County, 1954 OK 223, 276 P.2d 773 (Okla. 1954), opinion supplemented, 1955 OK 111, 290 P.2d 118 (Okla. 1955).

Utah—Mooney v. Denver & R.G.W.R. Co., 118 Utah 307, 221 P.2d 628 (1950).

6 Tex.—Owens Corning v. Carter, 997 S.W.2d 560 (Tex. 1999).

7 Va.—Caldwell v. Seaboard System R.R., Inc., 238 Va. 148, 380 S.E.2d 910 (1989).

8 Ark.—Bowsher v. Digby, 243 Ark. 799, 422 S.W.2d 671 (1968).

9 Ala.—Ex parte Southern Ry. Co., 556 So. 2d 1082 (Ala. 1989).

10 Mont.—In re Marriage of Brown, 218 Mont. 14, 706 P.2d 116 (1985).

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2. Access to Courts

§ 1376. Residency requirements

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3375, 3376, 3450 to 3453, 3460, 3736, 3746, 3770 to 3772

While a state may not deny nonresidents access to the courts, it may impose residency requirements for matrimonial actions.

A state may not deny to nonresidents the right to sue in its courts under circumstances in which a resident would be entitled to sue.[1] However, a state may impose a durational residency requirement on the right to bring a matrimonial action.[2] A provision that one in the military service and stationed within the state a specified time shall be deemed a resident for the purpose of a divorce has been upheld.[3]

Footnotes

1 Md.—State, for Use of Strepay v. Cohen, 166 Md. 682, 172 A. 274, 94 A.L.R. 427 (1934).

2 U.S.—Sosna v. Iowa, 419 U.S. 393, 95 S. Ct. 553, 42 L. Ed. 2d 532, 19 Fed. R. Serv. 2d 925 (1975).

3 N.M.—Crownover v. Crownover, 1954-NMSC-092, 58 N.M. 597, 274 P.2d 127 (1954).

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3. Venue

§ 1377. Regulation of venue

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3375, 3376, 3452, 3453

Equal protection is not denied by statutes regulating the venue of particular actions unless they discriminate between persons similarly situated.

A state, in prescribing regulations relating to venue, must keep within the limitations prescribed by the equal protection clause of the federal or state constitution.[1] A classification for venue purposes that is arbitrary and unrelated to the purposes of the statute violates the Fourteenth Amendment.[2] However, the fact that venue cannot always be laid in a setting that is equally convenient for all does not offend equal protection requirements, unless the venue statute is arbitrary and fails to treat all who are similarly situated evenhandedly, and the fact that a plaintiff may choose between two different venue provisions cannot be said to create arbitrary classes among similarly situated defendants in violation of equal protection.[3]

Equal protection is not violated by a statute that prescribes a different venue for corporations from that prescribed for natural persons,[4] considering various benefits received from incorporating,[5] unless the provision does injustice to corporations generally

as a class.[6] Furthermore, equal protection is not denied by a statute that prescribes particular regulations as to venue applicable to corporations generally.[7]

A plaintiff's equal protection rights are not violated by a statute providing that those with personal injury claims against an electric company must bring an action in the county where the cause of action originated, unless the company has no agent in that county, even though claims against other entities may be brought in the county of the defendant's residence, where the venue statute had a reasonable basis, and the plaintiff would receive the same guarantee of a fair trial in either venue.[8]

A statute providing for a change of venue violates the Equal Protection Clause if it discriminates arbitrarily against some persons.[9]

Footnotes

1 U.S.—Power Mfg. Co. v. Saunders, 274 U.S. 490, 47 S. Ct. 678, 71 L. Ed. 1165 (1927).
Wis.—State ex rel. Saylesville Cheese Mfg. Co. v. Zimmerman, 220 Wis. 682, 265 N.W. 856 (1936).

2 Ky.—Hummeldorf v. Hummeldorf, 616 S.W.2d 794 (Ky. Ct. App. 1981).

3 Mo.—State ex rel. Northwest Arkansas Produce Co., Inc. v. Gaertner, 573 S.W.2d 391 (Mo. Ct. App. 1978).

4 R.I.—Plantation Legal Defense Services, Inc. v. O'Brien, 121 R.I. 595, 401 A.2d 1277 (1979).
Libel actions
Wis.—Voit v. Madison Newspapers, Inc., 116 Wis. 2d 217, 341 N.W.2d 693 (1984).

5 Wis.—Voit v. Madison Newspapers, Inc., 116 Wis. 2d 217, 341 N.W.2d 693 (1984).

6 U.S.—Bain Peanut Co. of Tex. v. Pinson, 282 U.S. 499, 51 S. Ct. 228, 75 L. Ed. 482 (1931).

7 U.S.—Bain Peanut Co. of Tex. v. Pinson, 282 U.S. 499, 51 S. Ct. 228, 75 L. Ed. 482 (1931).

8 Ga.—Driskell v. Georgia Power Co., 260 Ga. 488, 397 S.E.2d 285 (1990).

9 Md.—Davidson v. Miller, 276 Md. 54, 344 A.2d 422 (1975).

16B C.J.S. Constitutional Law § 1378

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D. Civil Remedies and Proceedings

3. Venue

§ 1378. Foreign corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3376, 3452, 3453

Equal protection is not violated by different venue rules for suits against foreign corporations unless they discriminate against foreign corporations that are licensed to do business in the state.

A rational basis test[1] applies in equal protection challenges to statutes specifying specific venues for suits against nonresident corporations.[2] Rules permitting a plaintiff to sue a corporation incorporated in that state only in the county of its principal place of business, but permitting a suit in any county against a corporation incorporated elsewhere, do not violate equal protection.[3] The validity of such a venue rule is not affected by a prior decision that a statute that authorizes an action against a foreign corporation, having an established right to do business in the state, in any county in the state, denies equal protection, where suits against domestic corporations and individuals may be brought only in the counties where they are found or do business, or have a representative,[4] since the statute in the earlier decision applied only to foreign corporations authorized to do business in the state at issue, so that most of the corporations subject to that statute probably had a place of business in that state, and imposing a different venue requirement discriminated against foreign corporations, while a rule placing the venue of an action against a foreign corporation in any county is not limited to corporations having a principal place of business in the state and may be justified on the reasonable basis that, for most nonresident defendants, the inconvenience will be great regardless of where

they must defend an action in the state.[5] Equal protection is not denied by a more limited statutory provision that authorizes an action against a foreign corporation in any county where the corporation may have an agency or representative,[6] or permits a transitory action to be brought against a foreign corporation in a county in which there may be property of or debts owing the corporation, or where the corporation may be found.[7] On the other hand, a statute is invalid, which allows contract actions against foreign corporations to be brought in the county in which the plaintiffs resided at the time the cause of action arose, where state law does not permit domestic corporations to be sued in contract actions in that county.[8]

A statute that provided a plaintiff fewer venue choices when an action is brought against a nonresident corporation violated equal protection under a rational basis test by clearly discriminating against a tort victim injured by a corporate nonresident.[9]

To avoid a violation of the Equal Protection Clause, a foreign corporation must be accorded the same right as a domestic corporation to have the venue changed to a county in which it has an office, resident agent, or place of business.[10]

Footnotes

1 § 1279.
2 Mont.—Davis v. Union Pacific R. Co., 282 Mont. 233, 937 P.2d 27 (1997).
3 U.S.—Burlington Northern R. Co. v. Ford, 504 U.S. 648, 112 S. Ct. 2184, 119 L. Ed. 2d 432 (1992).
4 U.S.—Power Mfg. Co. v. Saunders, 274 U.S. 490, 47 S. Ct. 678, 71 L. Ed. 1165 (1927).
5 U.S.—Burlington Northern R. Co. v. Ford, 504 U.S. 648, 112 S. Ct. 2184, 119 L. Ed. 2d 432 (1992).
6 U.S.—American Motorists Ins. Co. v. Starnes, 425 U.S. 637, 96 S. Ct. 1800, 48 L. Ed. 2d 263 (1976).
7 Okla.—Phillips Petroleum Co. v. Smith, 1936 OK 560, 177 Okla. 539, 61 P.2d 184, 107 A.L.R. 858 (1936).
8 Ark.—Philco-Ford Corp. v. Holland, 261 Ark. 404, 548 S.W.2d 828 (1977).
9 Mont.—Davis v. Union Pacific R. Co., 282 Mont. 233, 937 P.2d 27 (1997).
10 Minn.—Smith v. Utah Home Fire Ins. Co., 234 Minn. 169, 47 N.W.2d 785 (1951).

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4. Remedies

§ 1379. Regulation of remedies available in particular cases

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3211, 3376, 3450, 3454, 3459, 3460, 3736, 3746, 3770 to 3772

Equal protection is not denied by statutes that prescribe and regulate the remedies available in particular cases unless they discriminate between persons in like circumstances.

A legislature may, without denying equal protection, prescribe remedies, and when they are available.[1] Equal protection does not require any particular kind of remedy or identical remedies,[2] and a legislature may prescribe different remedies for the same legal situation or wrong in different parts of the state.[3] Furthermore, a state may limit the application of particular remedies in certain classes of cases.[4] For example, statutes limiting recovery for defamation by the news media to special damages, unless a correction is requested and refused, have been held valid[5] on the basis that the encouragement of the dissemination of the news is sufficient to sustain such a statute under the Equal Protection Clause.[6] However, a legislature may not provide for the summary ejectment of insolvent tenants but not of solvent ones.[7]

A legislature's power to grant or withhold equitable relief must not be exercised in such a way as to grant equitable relief to some persons and deny it to others under like circumstances.[8] Despite equal protection challenges, statutes have been upheld that authorize the ex parte issuance of temporary restraining orders,[9] or the assessment of damages against the party granted a preliminary injunction that is later dissolved as having been wrongfully issued.[10]

Footnotes

1 U.S.—Scott v. Paisley, 271 U.S. 632, 46 S. Ct. 591, 70 L. Ed. 1123 (1926).
Disposition of property on divorce
Ill.—In re Marriage of Thornqvist, 79 Ill. App. 3d 791, 35 Ill. Dec. 342, 399 N.E.2d 176 (1st Dist. 1979).
Election between workers' compensation and tort
U.S.—Arizona Copper Co. v. Hammer, 250 U.S. 400, 39 S. Ct. 553, 63 L. Ed. 1058, 6 A.L.R. 1537 (1919).
Tort claims act
Malpractice plaintiffs failed to demonstrate that the state tort claims act violated the right to equal protection, in a suit against a physician allegedly employed by a state university medical center, even though the plaintiffs claimed that the application of the act meant that physician was treated differently from others, where plaintiffs failed to demonstrate that they were treated differently from others similarly situated.
Miss.—Smith v. Braden, 765 So. 2d 546 (Miss. 2000).

2 Ind.—State ex rel. McCormick v. Superior Court of Knox County, 229 Ind. 118, 95 N.E.2d 829 (1951).

3 **Eviction more efficient in city**
U.S.—Velazquez v. Thompson, 321 F. Supp. 34 (S.D. N.Y. 1970), order aff'd, 451 F.2d 202 (2d Cir. 1971).

4 U.S.—U.S. ex rel. Sherr v. Anaconda Wire & Cable Co., 57 F. Supp. 106 (S.D. N.Y. 1944), judgment aff'd, 149 F.2d 680 (C.C.A. 2d Cir. 1945).
Cal.—Block v. Board of Police Com'rs of City of Los Angeles, 110 Cal. App. 2d 67, 242 P.2d 68 (2d Dist. 1952).

5 Fla.—Ross v. Gore, 48 So. 2d 412 (Fla. 1950).

6 Cal.—Werner v. Southern Cal. Associated Newspapers, 35 Cal. 2d 121, 216 P.2d 825, 13 A.L.R.2d 252 (1950).

7 Cal.—Mihans v. Municipal Court, 7 Cal. App. 3d 479, 87 Cal. Rptr. 17 (1st Dist. 1970).

8 Md.—In re Careful Laundry, 204 Md. 360, 104 A.2d 813 (1954).

9 N.C.—State ex rel. Gilchrist v. Hurley, 48 N.C. App. 433, 269 S.E.2d 646 (1980).

10 Ill.—Buzz Barton & Associates, Inc. v. Giannone, 108 Ill. 2d 373, 91 Ill. Dec. 636, 483 N.E.2d 1271 (1985).

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4. Remedies

§ 1380. Creditors' remedies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3459

Attachment and garnishment statutes have generally been upheld in the face of equal protection challenges.

An attachment statute is not violative of equal protection, even though a writ sought on the ground of nonresidency may be issued without a bond, and the defendant, in order to replevy the goods, must post a bond.[1]

A statute exempting public employees' retirement benefits from attachment is constitutional since the exemption applies to all creditors.[2] Various statutes exempting income or assets from garnishment do not violate equal protection.[3]

A mechanics' lien statute for claims on a public project did not violate equal protection, despite the fact that it created a remedy only for claimants who furnished supplies to contractors and subcontractors, but not for claimants who furnished supplies to a materialman, where a distinction could be drawn that rationally furthered the state's legitimate interest in protecting the public entity, its contractor, and the surety on a public works project from unforeseeable claims.[4]

Footnotes

1 Ala.—Allen Trucking Co., Inc. v. Adams, 56 Ala. App. 478, 323 So. 2d 367 (Civ. App. 1975).

2 N.H.—Fowler v. Fowler, 116 N.H. 446, 362 A.2d 204, 93 A.L.R.3d 705 (1976).

3 **30 days of personal earnings**
Cal.—Thayer v. Madigan, 52 Cal. App. 3d 16, 125 Cal. Rptr. 28 (1st Dist. 1975).
"In lieu of homestead" exemption
U.S.—Moya v. DeBaca, 286 F. Supp. 606 (D.N.M. 1968).
Salaries of public officials and employees
Ga.—Harp v. Winkles, 255 Ga. 42, 335 S.E.2d 292 (1985).
Public pension
Ill.—Shrader v. Maultz, 58 Ill. App. 3d 484, 16 Ill. Dec. 44, 374 N.E.2d 819 (1st Dist. 1978).

4 Colo.—Western Metal Lath, a Div. of Triton Group, Ltd. v. Acoustical and Const. Supply, Inc., 851 P.2d 875, 82 Ed. Law Rep. 956 (Colo. 1993).

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4. Remedies

§ 1381. Conditions precedent to bringing certain kinds of actions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3450, 3460, 3736, 3746, 3770 to 3772

A state may, without violating equal protection, prescribe reasonable conditions precedent to bringing specified types of actions, including notice of claim against a government entity.

As long as the basis of distinction is real and the condition imposed has a reasonable relation to a legitimate object, a legislature may, without violating equal protection, prescribe reasonable conditions precedent to bringing specified kinds of actions,[1] such as by assessing higher filing fees in matrimonial actions than in other civil cases,[2] or requiring the execution of a bond,[3] the filing of an affidavit of merit in a medical malpractice case,[4] prior notice of a defect in a public way,[5] a timely notice of account to a city,[6] or notice to the state attorney general of a hearing when the state is a party.[7]

Most courts have upheld, in the face of equal protection challenges, requirements that a notice of a claim or injury be given to a political subdivision[8] although it has been held elsewhere that notice of claim prerequisites to bringing actions against political subdivisions deny equal protection.[9] It is generally not a denial of equal protection that a statutory notice requirement is only applicable to actions against some political subdivisions,[10] or that varying time periods apply to different subdivisions,[11]

although it has also been held that a notice of claim provision in a municipal tort claim act violates equal protection where it creates a jurisdictional obstacle for plaintiffs suing municipalities not encountered by victims of torts committed by the state.[12]

A statute requiring that a person file a written statement with a county attorney within a prescribed period, in order to maintain a civil action for a claimed injury caused by the application of pesticide against private persons, is a violation of equal protection, since the statute creates an unreasonable impediment to a civil remedy, and the requirement does little to advance the legislative purpose of the statute.[13]

Footnotes

1 U.S.—Jones v. Union Guano Co., 264 U.S. 171, 44 S. Ct. 280, 68 L. Ed. 623 (1924).
Ga.—State v. Sanks, 225 Ga. 88, 166 S.E.2d 19 (1969).

2 U.S.—Murillo v. Bambrick, 681 F.2d 898 (3d Cir. 1982).

3 U.S.—Kreitzer v. Puerto Rico Cars, Inc., 417 F. Supp. 498 (D.P.R. 1975).
Payment of tax or posting of bond
Ala.—Ex parte State ex rel. Atty.Gen., 252 Ala. 149, 39 So. 2d 669 (1949).
Mich.—Western Elec. Co. v. State, 312 Mich. 582, 20 N.W.2d 734 (1945).

4 Mo.—Mahoney v. Doerhoff Surgical Services, Inc., 807 S.W.2d 503 (Mo. 1991).

5 Mass.—Ram v. Town of Charlton, 409 Mass. 481, 567 N.E.2d 208 (1991).

6 Nev.—L-M Architects, Inc. v. City of Sparks, 100 Nev. 334, 683 P.2d 11 (1984).

7 Ga.—Georgia Dept. of Medical Assistance v. Columbia Convalescent Center, 265 Ga. 638, 458 S.E.2d 635 (1995).

8 U.S.—Oquendo v. Insurance Co. of Puerto Rico, 388 F. Supp. 1030 (D.P.R. 1974).
Ala.—Parton v. City of Huntsville, 362 So. 2d 898 (Ala. 1978).
Colo.—Fritz v. Regents of University of Colorado, 196 Colo. 335, 586 P.2d 23 (1978).
Ga.—Shoemaker v. Aldmor Management, Inc., 249 Ga. 430, 291 S.E.2d 549 (1982).
Ind.—Gonser v. Board of Com'rs for Owen County, 177 Ind. App. 74, 378 N.E.2d 425 (1978).
Md.—Johnson v. Maryland State Police, 331 Md. 285, 628 A.2d 162 (1993).
Mo.—Findley v. City of Kansas City, 782 S.W.2d 393 (Mo. 1990).
Neb.—Willis v. City of Lincoln, 232 Neb. 533, 441 N.W.2d 846 (1989).
N.M.—Marrujo v. New Mexico State Highway Transp. Dept., 1994-NMSC-116, 118 N.M. 753, 887 P.2d 747 (1994).
N.D.—Herman v. Magnuson, 277 N.W.2d 445 (N.D. 1979).
Pa.—James v. Southeastern Pennsylvania Transp. Authority, 505 Pa. 137, 477 A.2d 1302 (1984).
S.D.—Budahl v. Gordon and David Associates, 287 N.W.2d 489 (S.D. 1980).
Ordinance imposing waiting period
Ordinance requiring persons filing a notice of claim against city to wait 60 days before bringing a court action does not deny equal protection to claimants against the city, even those claimants who, because of delay, will have their actions governed by a new tort reform act.
Wash.—Daggs v. City of Seattle, 110 Wash. 2d 49, 750 P.2d 626 (1988).
State university professor
Former medical resident's equal protection rights were not violated by a statutory requirement that the resident file notice of claim before bringing a civil action against a state university medical professor who served as director of a hospital's residency training program, despite the resident's claim that the medical school, through its affiliation agreements with hospital, had created a class of otherwise private citizens who were protected by the notice of claim statute, since it was reasonable to protect, as state employees, faculty members who were assigned to program.
Wis.—Riccitelli v. Broekhuizen, 227 Wis. 2d 100, 595 N.W.2d 392, 135 Ed. Law Rep. 817 (1999).

9 Iowa—Miller v. Boone County Hosp., 394 N.W.2d 776 (Iowa 1986).
W. Va.—Lepon v. Tiano, 181 W. Va. 185, 381 S.E.2d 384 (1989).

10 N.Y.—Ayvee Const. Co., Inc. v. Village of New Paltz, 78 A.D.2d 942, 433 N.Y.S.2d 260 (3d Dep't 1980).

11 Ill.—Fujimura v. Chicago Transit Authority, 67 Ill. 2d 506, 10 Ill. Dec. 619, 368 N.E.2d 105 (1977).

Utah—Crowder v. Salt Lake County, 552 P.2d 646 (Utah 1976).

12 Minn.—Glassman v. Miller, 356 N.W.2d 655 (Minn. 1984).

13 Kan.—Ernest v. Faler, 237 Kan. 125, 697 P.2d 870 (1985).

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4. Remedies

§ 1382. Distinctions between residents and nonresidents

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3450, 3460, 3736, 3746, 3770 to 3772

The constitutionality of a remedial statute that makes a distinction between residents and nonresidents is judged on whether the nonresidence of a party is a real distinction and the condition imposed has a reasonable relation to a legitimate object.

On an equal protection challenge, the constitutionality of a remedial statute, which makes a sharp distinction between residents and nonresidents, is to be judged in terms of whether there is a rational basis to support the apparent legislative judgment.[1] To the extent that the nonresidence of a party makes a real distinction between a litigant's situation and that of resident parties, distinctions based on that difference may be prescribed by statute.[2] For instance, distinctions between residents and nonresidents have been recognized with regard to the issuance of an attachment,[3] including subsidiary matters as the need to give security[4] or the availability of an attachment if the underlying obligation is secured.[5]

Footnotes

1 U.S.—Central Sec. Nat. Bank of Lorain County v. Royal Homes, Inc., 371 F. Supp. 476 (E.D. Mich. 1974).

2 U.S.—Central Loan & Trust Co. v. Campbell Com'n Co., 173 U.S. 84, 19 S. Ct. 346, 43 L. Ed. 623 (1899).
Cal.—People ex rel. Cranston v. Bonelli, 15 Cal. App. 3d 129, 92 Cal. Rptr. 828 (3d Dist. 1971).

3 U.S.—Central Loan & Trust Co. v. Campbell Com'n Co., 173 U.S. 84, 19 S. Ct. 346, 43 L. Ed. 623 (1899); Central Sec. Nat. Bank of Lorain County v. Royal Homes, Inc., 371 F. Supp. 476 (E.D. Mich. 1974); Financial Services, Inc. v. Farrandina, 59 F.R.D. 1 (S.D. N.Y. 1972).
Cal.—Property Research Financial Corp. v. Superior Court, 23 Cal. App. 3d 413, 100 Cal. Rptr. 233 (2d Dist. 1972).

4 U.S.—Ownbey v. Morgan, 256 U.S. 94, 41 S. Ct. 433, 65 L. Ed. 837, 17 A.L.R. 873 (1921).

5 Cal.—National General Corp. v. Dutch Inns of America, Inc., 15 Cal. App. 3d 490, 93 Cal. Rptr. 343 (2d Dist. 1971).

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4. Remedies

§ 1383. Distinctions between corporations and individuals

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3450, 3460, 3736, 3746, 3770 to 3772

Different rules with regard to remedies may be prescribed in the case of corporations if they reflect real differences.

While the Fourteenth Amendment includes a private corporation as a "person" entitled to equal protection,[1] different rules with regard to remedies and procedure may be prescribed in the case of corporations from those that apply to natural persons, to the extent that they are based on real differences in the character and situation of the two classes of persons.[2]

Generally speaking, a statute that denies to a foreign corporation the benefit, on equal terms, of any remedy or procedure that is available to domestic corporations violates equal protection[3] if it is subjected, merely because it is a foreign corporation, to onerous requirements having no reasonable support and not imposed on other litigants in similar situations.[4] A statute that requires that foreign corporations obtain a certificate from, or file a copy of its charter with, a designated public official as a condition precedent to suing in the courts of a state does not discriminate against foreign corporations or deny them equal protection.[5] Similarly, the requirement of an arbitration clause for the settlement of losses in all fire insurance policies, as a condition precedent to doing insurance business in a state, is not a denial of equal protection.[6] A foreign corporation is not

denied equal protection by a statute that authorizes an injunction against a foreign corporation to restrain the business of selling certain bonds, without authorizing a similar remedy against domestic corporations,[7] or provides for foreign attachment against a foreign corporation although it is registered in the state.[8]

Footnotes

1 § 1261.

2 Ill.—Petition of Blacklidge, 359 Ill. 482, 195 N.E. 3 (1935).

3 U.S.—Kentucky Finance Corp. v. Paramount Auto Exch. Corp., 262 U.S. 544, 43 S. Ct. 636, 67 L. Ed. 1112 (1923).

4 U.S.—State of Washington ex rel. Bond & Goodwin & Tucker v. Superior Court of State of Washington for Spokane County, 289 U.S. 361, 53 S. Ct. 624, 77 L. Ed. 1256, 89 A.L.R. 653 (1933); Kentucky Finance Corp. v. Paramount Auto Exch. Corp., 262 U.S. 544, 43 S. Ct. 636, 67 L. Ed. 1112 (1923).

5 U.S.—Railway Express Agency v. Commonwealth of Virginia, 282 U.S. 440, 51 S. Ct. 201, 75 L. Ed. 450, 72 A.L.R. 102 (1931); Interstate Amusement Co. v. Albert, 239 U.S. 560, 36 S. Ct. 168, 60 L. Ed. 439 (1916).

6 U.S.—Hardware Dealers' Mut. Fire Ins. Co. of Wis. v. Glidden Co., 284 U.S. 151, 52 S. Ct. 69, 76 L. Ed. 214 (1931).

7 Mass.—Long v. Co-operative League of America, 246 Mass. 235, 140 N.E. 811 (1923).

8 U.S.—McGoldrick v. ICS Sales & Leasing, Inc., 412 F. Supp. 268 (E.D. N.Y. 1976).

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D. Civil Remedies and Proceedings

4. Remedies

§ 1384. Abrogation and substitution of remedies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3450, 3460, 3736, 3746, 3770 to 3772

Legislation that abrogates or substitutes remedies may withstand equal protection challenges if it furthers a government interest in a rational matter.

A legislature may confer a public benefit, thus satisfying equal protection requirements, by creating a substitute remedy when it limits or abolishes an existing one.[1] While there is authority that a collateral source statute, requiring the reduction of a recovery by the amount of collateral source payments, and abrogating the common-law collateral source rule, did not violate the equal protection clauses of a state and the federal constitutions, since it furthered a legitimate government interest of reducing insurance premiums and was rationally related to that goal,[2] a medical malpractice act abrogating the common-law collateral source rule was elsewhere held to violate the equal protection clause of a state constitution, by singling out negligent health care providers for favorable treatment not offered to other tortfeasors, since the government has neither a compelling nor legitimate interest in providing economic relief to one segment of society by depriving those who have been wronged of a judicial remedy, and the statute may increase the cost of insurance for members of the general public because they are potential victims of medical negligence.[3]

Footnotes

1 N.H.—Lorette v. Peter-Sam Inv. Properties, 140 N.H. 208, 665 A.2d 341 (1995).

Limits on liability

Statutes limiting liability and recovery of damages are considered social and economic legislation that trigger application of the rational basis test in an equal protection challenge.

Kan.—Miller v. Johnson, 295 Kan. 636, 289 P.3d 1098 (2012).

§§ 1555 to 1564.

2 Minn.—Imlay v. City of Lake Crystal, 453 N.W.2d 326 (Minn. 1990).

3 Kan.—Farley v. Engelken, 241 Kan. 663, 740 P.2d 1058, 74 A.L.R.4th 1 (1987).

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Validity and construction of state statute abrogating collateral source rule as to medical malpractice actions, 74 A.L.R.4th 32.

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5. Limitations

a. General Principles

§ 1385. Statutes of limitations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3376, 3454

Statutes of limitations are upheld in the face of an equal protection challenge if there is some rational basis for the distinctions made between classes of actions.

Since statutes of limitations do not implicate fundamental rights, a court applies a rational basis test[1] when determining an equal protection challenge to such a statute.[2] Limitations periods for particular classes of actions may be prescribed consistent with equal protection requirements,[3] provided different time limits reflect a difference in fact,[4] or there is some conceivable fact that might justify the disparity in treatment,[5] and there is no unreasonable discrimination or classification.[6] States are not required to furnish a compelling interest justifying statutes of limitations.[7] A state may prescribe a longer time for bringing suits against a foreign corporation than against a domestic one.[8] A borrowing statute, which allows the application of foreign statutes of limitations on a foreign cause of action, does not unreasonably discriminate against resident plaintiffs who are involved in out-of-state accidents and furthers an interest in obviating uncertainty where more than one statute of limitations might apply.[9]

A party is not denied equal protection by the application of laches.[10]

Footnotes

1 § 1279.

2 Ga.—Mansfield v. Pannell, 261 Ga. 243, 404 S.E.2d 104 (1991).
Iowa—Fisher v. McCrary-Rost Clinic, P.C., 580 N.W.2d 723 (Iowa 1998).
Kan.—Injured Workers of Kansas v. Franklin, 262 Kan. 840, 942 P.2d 591 (1997).
Nature of statutes of limitations
As a matter of constitutional law, statutes of limitations go to matters of remedy, not destruction of fundamental rights; accordingly, the General Assembly has the power to determine a statute of limitations and such a determination does not violate due process if it is reasonable.
Del.—Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 265 Ed. Law Rep. 1133 (Del. 2011).

3 Iowa—State ex rel. Krupke v. Witkowski, 256 N.W.2d 216 (Iowa 1977).
Pa.—Smock v. Com., 496 Pa. 204, 436 A.2d 615 (1981).
S.D.—Janish v. Murtha, 285 N.W.2d 708 (S.D. 1979).
Action against liquor licensee
Colo.—Estate of Stevenson v. Hollywood Bar and Cafe, Inc., 832 P.2d 718 (Colo. 1992).
Collection of debt owed for medical services
Ark.—Ballheimer v. Service Finance Corp., 292 Ark. 92, 728 S.W.2d 178 (1987).

4 N.H.—Belkner v. Preston, 115 N.H. 15, 332 A.2d 168 (1975).

5 Wis.—Castellani v. Bailey, 218 Wis. 2d 245, 578 N.W.2d 166, 117 A.L.R.5th 643 (1998).

6 Mo.—Laughlin v. Forgrave, 432 S.W.2d 308 (Mo. 1968).

7 Ind.—Rohrabaugh v. Wagoner, 274 Ind. 661, 413 N.E.2d 891 (1980).

8 Me.—Norton v. Home Ins. Co., 320 A.2d 688 (Me. 1974).

9 Wis.—Guertin v. Harbour Assur. Co. of Bermuda, Ltd., 141 Wis. 2d 622, 415 N.W.2d 831 (1987).

10 Ala.—Laird v. Tully, 220 Ala. 380, 125 So. 392 (1929).

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a. General Principles

§ 1386. Tolling of statutes of limitation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3376, 3454

Tolling provisions have generally been found consistent with equal protection although questions have arisen if claims against nonresidents are not subject to any limitation.

A statutory provision that tolls a statute of limitations in favor of only some persons does not violate equal protection,[1] and a statute that tolls the running of a statute of limitations during periods in which defendants have spent time out of the state does not violate equal protection if it has a rational basis.[2] Similarly, a statute that provides that the running of the applicable statute of limitations is tolled so long as an individual or corporation is not amenable to personal service within the state is constitutional, despite an equal protection challenge,[3] as where such a statute is applied to an unrepresented foreign corporation that is amenable to long-arm service, since an unrepresented corporation may be difficult to locate, and the institution of long-arm jurisdiction has not made service on an unrepresented foreign corporation the equivalent of service on a corporation with a local representative, and where the defendant is not totally deprived of all defenses, but may plead laches if prejudiced by an unexcused delay in being served.[4] However, there is state authority that a statute providing for the tolling of the limitation

period during a defendant's absence from the state, even though the defendant was at all times amenable to service and the plaintiff made no attempt to obtain substituted service on the defendant through available statutory methods, is unconstitutional as denying equal protection, since it would tend to immunize claims against foreign defendants from any statute of limitations, even though they could be located and served under a long-arm statute, and no legitimate interest of that state is furthered by denying nonresidents and those absent from the state the defense of limitations and placing them at a disadvantage compared to residents.[5] Also, a tolling provision that limits its application to state residents is violative of the Equal Protection Clause.[6]

The lowering of the age of majority, for the purpose of tolling, does not violate equal protection since a legislature could change the time when the disability of minority is removed without modifying the rights of mental incompetents.[7]

A court applied a rational relationship analysis in a challenge, under the Equal Protection Clause, to a statute of limitations providing, in effect, that it is tolled while a person is legally incompetent, but the action must, in any event, be brought within 20 years of accrual; while, in some situations, legislation involving mentally disabled persons may require heightened scrutiny, such a statute provides incompetents with favorable treatment, while recognizing a state interest in disallowing stale claims.[8] A statute of repose for claims brought by persons under legal disability does not violate equal protection, even though it contains an exception for childhood sexual assault, since the two groups of minor tort victims are not similarly situated.[9]

CUMULATIVE SUPPLEMENT

Cases:

Ohio statute that tolled statute of limitations while defendant was out-of-state did not violate dormant Commerce Clause as applied to physician who allegedly committed medical malpractice in Ohio while he was Ohio resident, but then moved to Florida before statute of limitations had run, even though it affected out-of-state residents more often than in-state ones, and discouraged residents from relocating; statute applied to Ohio resident who committed tort in Ohio just as it applied to out-of-state resident who did same, did not distinguish between interstate transactions and intrastate transactions, applied regardless of where underlying lawsuit arose, and had no protectionist purpose or effect. U.S. Const. art. 1, § 8, cl. 3; Ohio Rev. Code Ann. §§ 2305.15, 2305.113. Garber v. Menendez, 888 F.3d 839 (6th Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 **Prisoners**
Reasonable hypothesis that persons convicted of heinous crimes punishable by life imprisonment do not deserve benefit supports exclusion of life prisoners from statute that tolls limitations period for prisoners; therefore, statute does not violate equal protection.
S.C.—Mitchell v. Holler, 311 S.C. 406, 429 S.E.2d 793 (1993).

2 U.S.—Vostack v. Axt, 510 F. Supp. 217, 22 Ohio Op. 3d 360 (S.D. Ohio 1981).

3 U.S.—Jatco, Inc. v. Charter Air Center, Inc., 527 F. Supp. 314, 33 U.C.C. Rep. Serv. 240 (S.D. Ohio 1981).

4 U.S.—G. D. Searle & Co. v. Cohn, 455 U.S. 404, 102 S. Ct. 1137, 71 L. Ed. 2d 250 (1982).

5 Okla.—Wright v. Keiser, 1977 OK 121, 568 P.2d 1262 (Okla. 1977).

6 Ill.—Haughton v. Haughton, 76 Ill. 2d 439, 31 Ill. Dec. 183, 394 N.E.2d 385 (1979).

7 N.H.—Norton v. Patten, 125 N.H. 413, 480 A.2d 190 (1984).

8 W. Va.—Donley v. Bracken, 192 W. Va. 383, 452 S.E.2d 699 (1994).
As to tolling a statute of limitations applicable to tort claims against the government, see § 1388.

9 Kan.—Bonin v. Vannaman, 261 Kan. 199, 929 P.2d 754 (1996).

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a. General Principles

§ 1387. Repeal of statute or revival of claim

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3376, 3454

While a statute of limitations may be extended or repealed without implicating the Fourteenth Amendment, some courts have found statutes that attempt to create new causes of action or that do not treat old claims in a similar manner invalid.

Where the lapse of time has not invested a party with title to property, a state may repeal or extend a statute of limitations without violating the Fourteenth Amendment, even after the right of action has been barred, to restore a remedy and divest the defendant of the statutory defense.[1] However, a statute is invalid, as denying equal protection, if it attempts to create a new cause of action where a prior one has already been barred[2] or if it revives some old claims while not reviving more recent ones.[3]

A revival statute, which instituted a prospective discovery rule for certain toxic torts, but not exposure to diethylstilbestrol (DES), did not deny equal protection.[4]

Footnotes

1 U.S.—Chase Securities Corp. v. Donaldson, 325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945).

2 Ill.—Wilson v. All-Steel, Inc., 87 Ill. 2d 28, 56 Ill. Dec. 897, 428 N.E.2d 489 (1981).

3 Md.—Smith v. Westinghouse Elec. Corp., 266 Md. 52, 291 A.2d 452 (1972).

4 N.Y.—Hymowitz v. Eli Lilly and Co., 73 N.Y.2d 487, 541 N.Y.S.2d 941, 539 N.E.2d 1069 (1989).

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b. Statutes Applicable to Particular Claims

§ 1388. Actions by or against government

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3376, 3454

While provisions fixing a different limitation period for tort claims against the government have generally been upheld, some courts have rejected differences in treatment between government and private defendants.

A provision fixing a different period of limitation for tort actions against particular political subdivisions than for similar actions against others,[1] including other political subdivisions,[2] is usually considered valid except as applied to a case in which the subdivision has actual notice of the claim.[3]

While there is authority that a statute of limitations for bringing an action against a municipal corporation does not violate equal protection because the classification of tortfeasors into private and public categories rests on a legitimate state interest[4] of protecting the public treasury,[5] it has been held elsewhere that equal protection requires that a party have the same amount of time to bring a tort action against the government as one would have to bring the action against a private tortfeasor,[6] and such a statute impermissibly discriminates against persons who are injured by governmental, as opposed to private, tortfeasors.[7]

Because most jurisdictions do not recognize the tolling of a tort claim statute of limitations for minors, they are not denied equal protection, according to some authority, even though minors who are injured by a private party benefit from tolling,[8] but statutes of limitations for a tort action against a political subdivision were elsewhere held to violate equal protection, as applied to minors, since minors do not have the capacity to bring suit,[9] and no rational basis was found for failing to toll the statute.[10] Similarly, a provision in a tort claims act limiting actions by minors violated equal protection where there was no rational basis for treating minors differently from other persons under disability.[11]

A statute providing that there is no time limitation on actions brought in the name of or for the benefit of a state reiterates a state's common-law immunity from statutes of limitations, and equal protection analysis is not applicable.[12]

Footnotes

1 U.S.—Wilson & Co. v. City of Jacksonville, 170 F.2d 876 (5th Cir. 1948).
Neb.—Campbell v. City of Lincoln, 195 Neb. 703, 240 N.W.2d 339 (1976).
Hospital negligence
Application of tort claims act statute of limitations to medical negligence actions against governmental hospitals, while having longer medical malpractice limitations period apply to such actions against private hospitals, did not violate equal protection, since legislature could rationally limit waiver of sovereign immunity to shorter period, to minimize undue burden on public entity resulting from late claims.
S.C.—Murphy v. Richland Memorial Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995).

2 Ill.—Fujimura v. Chicago Transit Authority, 67 Ill. 2d 506, 10 Ill. Dec. 619, 368 N.E.2d 105 (1977).
N.M.—Espanola Housing Authority v. Atencio, 1977-NMSC-074, 90 N.M. 787, 568 P.2d 1233 (1977).

3 Minn.—Kossak v. Stalling, 277 N.W.2d 30 (Minn. 1979).

4 Okla.—Black v. Ball Janitorial Service, Inc., 1986 OK 75, 730 P.2d 510 (Okla. 1986).

5 Me.—Langevin v. City of Biddeford, 481 A.2d 495 (Me. 1984).

6 Wash.—Daggs v. City of Seattle, 110 Wash. 2d 49, 750 P.2d 626 (1988).

7 Iowa—Miller v. Boone County Hosp., 394 N.W.2d 776 (Iowa 1986).

8 Iowa—Harden v. State, 434 N.W.2d 881 (Iowa 1989).

9 Ohio—Adamsky v. Buckeye Local School Dist., 73 Ohio St. 3d 360, 1995-Ohio-298, 653 N.E.2d 212, 102 Ed. Law Rep. 294 (1995).

10 S.C.—Green By and Through Green v. Lewis Truck Lines, Inc., 315 S.C. 253, 433 S.E.2d 844, 84 Ed. Law Rep. 1158 (1993).

11 W. Va.—Whitlow v. Board of Educ. of Kanawha County, 190 W. Va. 223, 438 S.E.2d 15, 88 Ed. Law Rep. 406 (1993).

12 Wash.—Bellevue School Dist. No. 405 v. Brazier Const. Co., 103 Wash. 2d 111, 691 P.2d 178, 21 Ed. Law Rep. 734 (1984).

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5. Limitations

b. Statutes Applicable to Particular Claims

§ 1389. Claims against estates

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3376, 3454

Courts have generally upheld limitations periods for bringing claims against estates despite equal protection challenges.

Statutes providing limitation periods for claims against estates have been upheld, as not violating the right to equal protection,[1] since they provide a rational means of achieving a legitimate government interest in the finality of claims against estates.[2] A longer period of limitations may be provided for claims against estates covered by insurance, without denying equal protection.[3] A party is not denied equal protection by a statute that provides for a shorter period of limitations where recovery is sought from an estate than from living persons.[4] On the other hand, a statute providing a shorter period of limitations for recovery sought against an estate than against others was found to deny equal protection on the basis that a state's interest in the prompt administration of estates was not sufficiently important to justify discrimination against plaintiffs in survival actions.[5] A statute requiring that administrators of estates prosecute pending tort actions within a specified time after an original plaintiff's death, tested under the rational basis criteria, was held unconstitutional to the extent that it allowed administrators in some counties less time to prosecute actions.[6]

Footnotes

1 Cal.—Glass v. Benkert, 18 Cal. App. 3d 322, 95 Cal. Rptr. 735 (2d Dist. 1971).
R.I.—McAlpine's Estate v. McAlpine's Estate, 120 R.I. 135, 386 A.2d 179 (1978).
Nonresident aliens
Provision requiring nonresident alien heirs to claim their interests in estate within prescribed period from date of death does not deny nonresident aliens equal protection notwithstanding fact that all other persons are allowed to file claims within prescribed period from date of decree making distribution.
Cal.—Estate of Horman, 5 Cal. 3d 62, 95 Cal. Rptr. 433, 485 P.2d 785 (1971).

2 Miss.—Townsend v. Estate of Gilbert, 616 So. 2d 333 (Miss. 1993).

3 Wash.—Belancsik v. Overlake Memorial Hospital, 80 Wash. 2d 111, 492 P.2d 219 (1971).

4 N.H.—Burke v. Fireman's Fund Ins. Co., 120 N.H. 365, 415 A.2d 677 (1980).
Pa.—Lovejoy v. Georgeff, 224 Pa. Super. 206, 303 A.2d 501 (1973).

5 N.H.—Gould v. Concord Hosp., 126 N.H. 405, 493 A.2d 1193 (1985).

6 N.H.—Belkner v. Preston, 115 N.H. 15, 332 A.2d 168 (1975).

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5. Limitations

b. Statutes Applicable to Particular Claims

§ 1390. Limitations of actions for paternity suits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3376, 3454

Paternity statutes that specify a short period for bringing a paternity and support action violate the child's equal protection rights, but there is a difference of opinion with regard to statutes limiting the time to establish paternity for inheritance purposes.

Limitation periods imposed on paternity and support suits brought by illegitimate children, which are more restrictive than those imposed on support suits by legitimate children, will survive equal protection scrutiny to the extent that they are substantially related to a legitimate state interest.[1] Statutes that provide a period of limitation for a paternity suit brought to obtain support may deny equal protection where a short time limitation is not substantially related to a legitimate interest in avoiding the prosecution of stale or fraudulent claims.[2] For instance, a six-year statute of limitations for paternity actions did not withstand heightened equal protection scrutiny, since not even that time necessarily provides a reasonable opportunity to assert a claim on behalf of the child, and is not reasonably related to the state's interest described above.[3] However, a paternity statute that

limits only the mother's and a welfare agency's claim does not violate equal protection since it does not restrict the right to seek support on the child's behalf.[4]

A statute requiring that paternity be established before the child is one year old may violate the equal protection rights of a child who, after becoming an adult, sought to establish heirship in a probate proceeding[5] although elsewhere it was stated that equal protection is not violated in this situation since the putative child was not seeking support.[6] It has also been held that a requirement that a paternity proceeding be instituted during the putative father's lifetime to establish inheritance rights does not violate equal protection.[7]

A statute of limitations on actions to contest presumed paternity supports a legitimate state interest of protecting paternal relationships and thus does not violate the equal protection rights of an alleged biological father who did not challenge the paternity of the former husband of the child's mother until after the period expired.[8]

Footnotes

1 U.S.—Mills v. Habluetzel, 456 U.S. 91, 102 S. Ct. 1549, 71 L. Ed. 2d 770 (1982).

2 U.S.—Pickett v. Brown, 462 U.S. 1, 103 S. Ct. 2199, 76 L. Ed. 2d 372 (1983); Mills v. Habluetzel, 456 U.S. 91, 102 S. Ct. 1549, 71 L. Ed. 2d 770 (1982).
Colo.—People In Interest of J.M.A., 803 P.2d 187 (Colo. 1990).
La.—Pace v. State Through Louisiana State Employees Retirement System, 648 So. 2d 1302 (La. 1995).

3 U.S.—Clark v. Jeter, 486 U.S. 456, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988).

4 R.I.—Spagnoulo v. Bisceglio, 473 A.2d 285 (R.I. 1984).

5 Tex.—Dickson v. Simpson, 807 S.W.2d 726 (Tex. 1991).

6 Fla.—In re Estate of Smith, 685 So. 2d 1206 (Fla. 1996).

7 Conn.—Hayes v. Smith, 194 Conn. 52, 480 A.2d 425 (1984).

8 Mo.—W.B. v. M.G.R., 955 S.W.2d 935 (Mo. 1997).

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§ 1391. Wrongful death

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3376, 3454

Time limits for bringing a wrongful death action generally do not violate equal protection requirements.

Equal protection is not violated by a different limitation period governing a wrongful death action[1] as contrasted with a negligence action[2] or by a statute providing that spouses and minor children of a decedent have less time to bring a wrongful death suit where the decedent is also survived by a parent than where there is no surviving parent.[3]

A holding that a statute of limitations in a wrongful death action runs from the alleged wrongful act or omission does not deny a plaintiff equal protection.[4] On the other hand, a statutory provision for the accrual of a wrongful death action at the time of death has been held to violate equal protection, where the discovery rule would have allowed the action to accrue later, when the plaintiff knew or should have known facts giving rise to the claim.[5]

Footnotes

1 Conn.—Ecker v. Town of West Hartford, 205 Conn. 219, 530 A.2d 1056 (1987).

2 U.S.—Cadieux v. International Tel. & Tel. Corp., 593 F.2d 142 (1st Cir. 1979).

3 Mo.—Crane v. Riehn, 568 S.W.2d 525 (Mo. 1978).

4 Del.—Reyes v. Kent General Hosp., Inc., 487 A.2d 1142 (Del. 1984).

5 Ariz.—Anson v. American Motors Corp., 155 Ariz. 420, 747 P.2d 581 (Ct. App. Div. 1 1987).

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§ 1392. Medical malpractice

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3376, 3454

Medical malpractice statutes of limitation have generally been upheld under a rational basis test although some courts have found invalid statutes of repose that bar recovery for injuries that could not have been discovered earlier.

The rational basis test,[1] rather than strict scrutiny, applies when reviewing equal protection challenges to medical malpractice statutes of limitation,[2] and those statutes do not violate equal protection so long as they are reasonable.[3] While a limitations period for medical malpractice actions might violate equal protection if it does not suitably further any appropriate state interest,[4] these statutes have usually been upheld as rationally related to legislative purposes of decreasing malpractice insurance premiums and controlling health care costs.[5] However, a statute of limitations requiring that a medical malpractice action be brought within two years after when the negligent or wrongful act occurred has been held to deny equal protection as applied where the injury occurs more than two years after the negligent act.[6]

Differences between the time of accrual of a cause of action based on malpractice and one based on torts generally, which have a reasonable basis, will be upheld.[7] Statutes providing that a suit for medical malpractice brought on behalf of a minor must be brought within a shorter period than other tort actions by a minor, or are not subject to the same tolling principles, have also been upheld[8] although a similar one was invalidated as not being rationally related to a legitimate purpose of alleviating a medical malpractice crisis.[9] A medical malpractice statute of limitations with regard to an incompetent's claims did not violate equal protection as applied where the guardian had retained counsel to investigate the possibility of bringing a malpractice suit.[10] A distinction between medical and dental malpractice claimants has been upheld on the basis that medical malpractice plaintiffs faced additional restrictions.[11]

A different statute of limitations for malpractice involving foreign objects than that for all other malpractice claims is rationally related to the purpose of discouraging false or frivolous claims[12] and there is less danger of a frivolous claim.[13] Thus, it is permissible to allow a medical malpractice action to accrue from the date of discovery when the negligence involves leaving a foreign object in the body, and from the date of the act of neglect in other cases, without depriving patients in the latter category of their right to equal protection.[14]

Medical malpractice statutes of repose have been upheld as bearing a rational relationship to the objective of reducing liability exposure[15] and facilitating the ability to obtain malpractice insurance,[16] by eliminating stale claims, and facilitating the assessment of insurance premiums based on known risks.[17] Applying a statute of repose only to claims against a qualified health care provider is related to the rational goal of making professional liability insurance available to health care providers and does not violate equal protection.[18] However, the application of a statute of repose, or the abolition of the discovery rule, has been held to violate equal protection rights, where there was no rational basis for distinguishing plaintiffs who were unable to discover their claim within the statutory period from other litigants,[19] or this was not a necessary step to achieve a compelling state interest in reducing the cost of medical care or increasing its availability.[20]

The phasing in of a new malpractice statute of limitations may raise equal protection concerns.[21]

Footnotes

1 § 1279.

2 Ark.—Adams v. Arthur, 333 Ark. 53, 969 S.W.2d 598 (1998).
Mass.—Harlfinger v. Martin, 435 Mass. 38, 754 N.E.2d 63 (2001).
Mo.—Batek v. Curators of University of Missouri, 920 S.W.2d 895 (Mo. 1996).
Mont.—Estate of McCarthy v. Montana Second Judicial Dist. Court, Silverbow County, 1999 MT 309, 297 Mont. 212, 994 P.2d 1090 (1999).
N.M.—Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).
Wis.—Aicher ex rel. LaBarge v. Wisconsin Patients Compensation Fund, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849 (2000).

3 Colo.—Mishek v. Stanton, 200 Colo. 514, 616 P.2d 135 (1980).
La.—Whitnell v. Silverman, 686 So. 2d 23 (La. 1996).
S.C.—Smith v. Smith, 291 S.C. 420, 354 S.E.2d 36 (1987).
All medical malpractice plaintiffs treated the same
N.M.—Garcia on Behalf of Garcia v. La Farge, 1995-NMSC-019, 119 N.M. 532, 893 P.2d 428 (1995).
As to equal protection issues when a tort claims act applies to a claim against a public hospital, see § 1388.

4 La.—Whitnell v. Menville, 540 So. 2d 304 (La. 1989).

5 Ga.—Smith v. Cobb County-Kennestone Hosp. Authority, 262 Ga. 566, 423 S.E.2d 235 (1992).

Me.—Musk v. Nelson, 647 A.2d 1198 (Me. 1994).

6 Ga.—Shessel v. Stroup, 253 Ga. 56, 316 S.E.2d 155 (1984).

7 Ind.—Carmichael v. Silbert, 422 N.E.2d 1330 (Ind. Ct. App. 1981).

Difference between radiation injury and malpractice statutes

Idaho—Davis v. Moran, 112 Idaho 703, 735 P.2d 1014 (1987).

Loss of consortium

Ga.—Perry v. Atlanta Hosp. and Medical Center, Inc., 255 Ga. 431, 339 S.E.2d 264 (1986).

8 Ark.—Raley v. Wagner, 346 Ark. 234, 57 S.W.3d 683 (2001).

Del.—Cole v. Delaware League for Planned Parenthood, Inc., 530 A.2d 1119 (Del. 1987).

Ga.—Crowe v. Humana Hospital, 263 Ga. 833, 439 S.E.2d 654 (1994).

Me.—Maine Medical Center v. Cote, 577 A.2d 1173 (Me. 1990).

Mo.—Batek v. Curators of University of Missouri, 920 S.W.2d 895 (Mo. 1996).

Va.—Willis v. Mullett, 263 Va. 653, 561 S.E.2d 705 (2002).

Limiting joinder of new defendants

A medical malpractice statute of limitations that had been interpreted to preclude a minor on whose behalf an action was brought from amending pending complaint to include new defendants more than three years after an underlying occurrence was rationally related to a legitimate state interest and did not violate equal protection by placing minors suing doctors in worse position than minors suing other tort defendants or adults suing doctors.

R.I.—Dowd v. Rayner, 655 A.2d 679 (R.I. 1995).

9 S.D.—Lyons v. Lederle Laboratories, A Div. of American Cyanamid Co., 440 N.W.2d 769 (S.D. 1989).

10 Ga.—Kumar v. Hall, 262 Ga. 639, 423 S.E.2d 653 (1992).

Contribution claims distinguished

The Georgia legislature had a rational basis for permitting contribution claimants to toll the statute of limitations for medical malpractice actions, while not permitting the legally incompetent to toll their medical malpractice actions until their legal incompetence passed, and thus, the statutory distinction did not violate the Equal Protection Clause; the nature of the proof in a claim for contribution was vastly different from that in a medical malpractice suit, and a contribution claim among joint tortfeasors could not be said to increase the exposure of the medical community to malpractice damages.

U.S.—Deen v. Egleston, 597 F.3d 1223 (11th Cir. 2010).

11 Ohio—Evans v. Chapman, 28 Ohio St. 3d 132, 502 N.E.2d 1012 (1986).

12 S.C.—Jenkins v. Meares, 302 S.C. 142, 394 S.E.2d 317 (1990).

13 S.C.—Jenkins v. Meares, 302 S.C. 142, 394 S.E.2d 317 (1990).

14 Idaho—Hawley v. Green, 117 Idaho 498, 788 P.2d 1321 (1990).

Me.—Musk v. Nelson, 647 A.2d 1198 (Me. 1994).

15 N.D.—Hoffner v. Johnson, 2003 ND 79, 660 N.W.2d 909, 5 A.L.R.6th 611 (N.D. 2003).

Wis.—Aicher ex rel. LaBarge v. Wisconsin Patients Compensation Fund, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849 (2000).

16 **Repose statute applicable to minor's claim**

Kan.—Bonin v. Vannaman, 261 Kan. 199, 929 P.2d 754 (1996).

17 Ga.—Craven v. Lowndes County Hosp. Authority, 263 Ga. 657, 437 S.E.2d 308 (1993).

18 N.M.—Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).

19 Ohio—Gaines v. Preterm-Cleveland, Inc., 33 Ohio St. 3d 54, 514 N.E.2d 709 (1987).

20 Ariz.—Kenyon v. Hammer, 142 Ariz. 69, 688 P.2d 961 (1984).

21 Ga.—Mansfield v. Pannell, 261 Ga. 243, 404 S.E.2d 104 (1991).

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b. Statutes Applicable to Particular Claims

§ 1393. Products liability

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3376, 3454

Products liability statutes of repose have generally been upheld under a rational relationship test.

When determining whether a statute of repose applicable to products liability claims violates equal protection, the relevant inquiry is whether the statute bears a rational relationship to a legitimate state interest and is based on reasons related to accomplishing that goal.[1] Thus, statutes of repose for products liability actions have generally been upheld,[2] on the basis that they are rationally related to a legitimate government interest in remedying insurance problems created by open-ended liability,[3] by providing a maximum length of time sellers are subject to liability.[4] However, another court, applying an intermediate standard, requiring a close correspondence between the statutory classification and legislative goals,[5] has held a similar statute unconstitutional.[6]

A products liability statute of repose has been upheld, despite an equal protection challenge, where certain exceptions were based on the latent nature of certain injuries.[7]

The preservation of the integrity of the Uniform Commercial Code was a rational basis supporting the exclusion of breach of warranty actions under the Code from a products liability statute of limitations applicable to other causes of action against manufacturers and sellers, and this exclusion did not violate equal protection.[8]

Footnotes

1 Conn.—Daily v. New Britain Mach. Co., 200 Conn. 562, 512 A.2d 893 (1986).
As to the rational relationship test for violations of equal protection, generally, see § 1279.

2 Ga.—Love v. Whirlpool Corp., 264 Ga. 701, 449 S.E.2d 602 (1994).
Idaho—Mercado v. Baker, 117 Idaho 777, 792 P.2d 342 (1990).
Neb.—Spilker v. City of Lincoln, 238 Neb. 188, 469 N.W.2d 546 (1991).
Despite assertion that retailers and manufacturers are treated differently
N.C.—Tetterton v. Long Mfg. Co., Inc., 314 N.C. 44, 332 S.E.2d 67 (1985).

3 Ga.—Love v. Whirlpool Corp., 264 Ga. 701, 449 S.E.2d 602 (1994).

4 Idaho—Olsen v. J.A. Freeman Co., 117 Idaho 706, 791 P.2d 1285 (1990).

5 § 1278.

6 N.D.—Hanson v. Williams County, 389 N.W.2d 319 (N.D. 1986).

7 Colo.—Anderson v. M.W. Kellogg Co., 766 P.2d 637 (Colo. 1988).
Ga.—Love v. Whirlpool Corp., 264 Ga. 701, 449 S.E.2d 602 (1994).

8 Colo.—Persichini v. Brad Ragan, Inc., 735 P.2d 168, 4 U.C.C. Rep. Serv. 2d 96 (Colo. 1987).

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b. Statutes Applicable to Particular Claims

§ 1394. Improvements to real property

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3105, 3167, 3195, 3376, 3454

Statutes of repose for actions relating to improvements to real property are usually upheld under a rational basis test even though they favor designers or contractors.

A statute of repose for actions relating to improvements to real property is usually examined using the rational basis test,[1] under which they have been upheld,[2] although other courts have applied an intermediate test requiring a close correspondence or substantial relationship to a proper legislative goal and found these statutes unconstitutional.[3]

Construction statutes of repose have generally been upheld in the face of equal protection challenges, despite the fact that they give preferential treatment to architects, engineers, and construction contractors over the owners and occupiers of land,[4] manufacturers,[5] or material suppliers,[6] although another court has found that this distinction does not have a rational basis.[7] Similarly, while the classification of architects and engineers in a different manner from other persons involved in the construction process was found to meet the rational relationship test,[8] another court held that there was no substantial

justification for exempting design professionals from liability, thereby shifting liability for defective design and construction to owners and material suppliers, and thus, a statute of repose on suits against design professionals violated the equal protection clause of a state constitution.[9]

An exclusion from a statute of limitations governing actions for damages arising from improvements to real property for wrongful death actions did not violate equal protection since the beneficiaries of a wrongful death claim compose a separate class of claimants.[10]

Footnotes

1 Iowa—Krull v. Thermogas Co. of Northwood, Iowa, Div. of Mapco Gas Products, Inc., 522 N.W.2d 607 (Iowa 1994).
N.M.—Coleman v. United Engineers & Constructors, Inc., 1994-NMSC-074, 118 N.M. 47, 878 P.2d 996 (1994).
The rational relationship test is generally discussed in § 1279.

2 N.C.—Square D Co. v. C.J. Kern Contractors, Inc., 314 N.C. 423, 334 S.E.2d 63 (1985).

3 Alaska—Turner Const. Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988).
N.D.—Dickie v. Farmers Union Oil Co. of LaMoure, 2000 ND 111, 611 N.W.2d 168 (N.D. 2000).
As to the intermediate scrutiny test, generally, see § 1278.

4 Mo.—Blaske v. Smith & Entzeroth, Inc., 821 S.W.2d 822 (Mo. 1991).
S.C.—Snavely v. Perpetual Federal Sav. Bank, 306 S.C. 348, 412 S.E.2d 382 (1991).
Tex.—Trinity River Authority v. URS Consultants, Incorporated-Texas, 889 S.W.2d 259 (Tex. 1994).
Va.—Hess v. Snyder Hunt Corp., 240 Va. 49, 392 S.E.2d 817 (1990).
Wash.—1519-1525 Lakeview Blvd. Condominium Ass'n v. Apartment Sales Corp., 144 Wash. 2d 570, 29 P.3d 1249 (2001).
Distinction based on contractors having relinquished control
Colo.—Criswell v. M.J. Brock and Sons, Inc., 681 P.2d 495 (Colo. 1984).
Minn.—Olmanson v. LeSueur County, 693 N.W.2d 876 (Minn. 2005).

5 Wash.—1519-1525 Lakeview Blvd. Condominium Ass'n v. Apartment Sales Corp., 144 Wash. 2d 570, 29 P.3d 1249 (2001).

6 Miss.—Moore v. Jesco, Inc., 531 So. 2d 815 (Miss. 1988).
Mo.—Blaske v. Smith & Entzeroth, Inc., 821 S.W.2d 822 (Mo. 1991).
Nev.—Allstate Ins. Co. v. Furgerson, 104 Nev. 772, 766 P.2d 904 (1988).
N.D.—Bellemare v. Gateway Builders, Inc., 420 N.W.2d 733 (N.D. 1988).
Tex.—Trinity River Authority v. URS Consultants, Incorporated-Texas, 889 S.W.2d 259 (Tex. 1994).
Va.—Hess v. Snyder Hunt Corp., 240 Va. 49, 392 S.E.2d 817 (1990).

7 Wis.—Funk v. Wollin Silo & Equipment, Inc., 148 Wis. 2d 59, 435 N.W.2d 244 (1989).

8 Conn.—Zapata v. Burns, 207 Conn. 496, 542 A.2d 700 (1988).

9 Alaska—Turner Const. Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988).

10 Miss.—Phipps v. Irby Const. Co., 636 So. 2d 353 (Miss. 1993).

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D. Civil Remedies and Proceedings

6. Procedural Requirements

a. In General

§ 1395. Principles of procedural requirements

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3211, 3450, 3460, 3736, 3746, 3770 to 3772

Equal protection is implicated only if a procedure discriminates between persons similarly situated.

The Equal Protection Clause does not require uniformity of procedure,[1] and, if the procedure prescribed affects alike all similarly situated, the right of equal protection is not violated by the classification of litigation and prescription of certain rules of procedure for certain classes of cases.[2] However, a rule of procedure may not arbitrarily and unjustly discriminate between persons who are similarly situated,[3] such as by discriminating against indigent litigants.[4] Any arbitrary or unreasonable discrimination between corporations and individuals with regard to matters of procedure constitutes a denial of equal protection.[5]

Footnotes

1 U.S.—Dohany v. Rogers, 281 U.S. 362, 50 S. Ct. 299, 74 L. Ed. 904, 68 A.L.R. 434 (1930).

Iowa—Matter of Bishop, 346 N.W.2d 500, 16 Ed. Law Rep. 1373 (Iowa 1984).

2 U.S.—Dohany v. Rogers, 281 U.S. 362, 50 S. Ct. 299, 74 L. Ed. 904, 68 A.L.R. 434 (1930).

Ga.—Sellers v. Home Furnishing Co., Inc., 235 Ga. 831, 222 S.E.2d 34 (1976).

Iowa—Matter of Bishop, 346 N.W.2d 500, 16 Ed. Law Rep. 1373 (Iowa 1984).

Mich.—Moore v. Spangler, 401 Mich. 360, 258 N.W.2d 34 (1977).

Class-of-one claims

The Supreme Court's *Engquist* decision, eliminating class-of-one equal protection claims for government employees, does not bar all class-of-one claims involving discretionary state action.

U.S.—Analytical Diagnostic Labs, Inc. v. Kusel, 626 F.3d 135 (2d Cir. 2010).

Discretion in delineating classifications of litigants

Equal protection limits legislative discretion in delineating classifications of civil litigants only to the extent of forbidding arbitrary or irrational classifications, or discrimination which is invidious.

Mass.—Gillespie v. City of Northampton, 460 Mass. 148, 950 N.E.2d 377 (2011).

3 U.S.—Lee v. Habib, 424 F.2d 891 (D.C. Cir. 1970).

Me.—Harrington v. Harrington, 269 A.2d 310 (Me. 1970).

Disparity in suspension of police officers

A police officer, who was suspended and subsequently discharged for misconduct, was not "similarly situated" to other police officers who received pay during their suspensions, as required to establish class of one equal protection claim based on the suspension without pay, where other officers who received pay during suspensions were not discharged for misconduct.

U.S.—Stachowski v. Town of Cicero, 425 F.3d 1075 (7th Cir. 2005).

4 § 1410.

5 Cal.—Irwin v. City of Manhattan Beach, 65 Cal. 2d 13, 51 Cal. Rptr. 881, 415 P.2d 769 (1966).

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6. Procedural Requirements

a. In General

§ 1396. Process and pleading procedure

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3195, 3376, 3455 to 3458, 3463, 3464

The method for the issuance and service of process may be prescribed by a legislature without violating equal protection.

A legislature may, without violating the Equal Protection Clause, prescribe the method for the issuance and service of process.[1] A statute requiring a prompt service of process on claims involving redress against a governmental agency does not violate equal protection.[2]

Equal protection is not violated by a court's action, in accordance with its general rules, in refusing permission to file an amended pleading.[3]

Service on nonresidents.

Statutes specifying the manner of service on nonresidents have been upheld in the face of claims that they deny nonresidents equal protection[4] because the statutes act alike upon all nonresidents.[5] A statute requiring nonresidents availing themselves of its provisions to appoint an agent within the state, on whom process may be served, does not discriminate against nonresidents nor deny them equal protection but puts nonresidents on an equal footing with residents.[6] Different procedures for handling service upon foreign and domestic corporations or residents also do not necessarily deny local defendants equal protection.[7]

Footnotes

1 Kan.—Threadgill v. Beard, 225 Kan. 296, 590 P.2d 1021 (1979).

2 Mont.—Rierson v. State, 188 Mont. 522, 614 P.2d 1020 (1980), on reh'g on other grounds, 191 Mont. 66, 622 P.2d 195 (1981).

3 U.S.—Louisville & N.R. Co. v. Higdon, 234 U.S. 592, 34 S. Ct. 948, 58 L. Ed. 1484 (1914).

Election contest

Refusal to permit the amendment of a pleading in a local option election contest more than a specific time after votes were certified by the county board did not deny contestants equal protection where statute setting time limit applied to all petitioners contesting that type of election.

Ark.—Jones v. Etheridge, 242 Ark. 907, 416 S.W.2d 306 (1967).

4 Utah—Wein v. Crockett, 113 Utah 301, 195 P.2d 222 (1948).

5 Fla.—State ex rel. Weber v. Register, 67 So. 2d 619 (Fla. 1953).

6 U.S.—Kane v. New Jersey, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).

Iowa—Davidson v. Henry L. Doherty & Co., 214 Iowa 739, 241 N.W. 700, 91 A.L.R. 1308 (1932).

7 Ga.—Ticor Const. Co., Inc. v. Brown, 255 Ga. 547, 340 S.E.2d 923 (1986).

Papers served with summons

State rules of procedure do not deny equal protection to residents by providing that a person served outside the state must be served with copies of the summons and complaint while requiring only that copy of the summons be served upon those served within state.

U.S.—Owens v. I. F. P. Corp., 374 F. Supp. 1032 (W.D. Ky. 1974), judgment aff'd, 419 U.S. 807, 95 S. Ct. 23, 42 L. Ed. 2d 36 (1974).

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6. Procedural Requirements

a. In General

§ 1397. Rules governing joinder of parties and third-party actions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3376, 3455, 3456

Rules governing joinder and third-party actions have generally been upheld despite equal protection challenges.

Statutes dealing with the joinder of plaintiffs[1] and defendants have been upheld in the face of equal protection challenges.[2] Denying a third party an action against a tortfeasor's insurer for bad faith does not violate equal protection since the different treatment of the insured and the injured party is based on the insured's contractual relationship with the insurer.[3]

Footnotes

1 **Foster parents not proper plaintiffs in wrongful death action**
Ariz.—Solomon v. Harman, 107 Ariz. 426, 489 P.2d 236 (1971).

2 Ga.—Grissom v. Gleason, 262 Ga. 374, 418 S.E.2d 27 (1992).

3 Iowa—Bates v. Allied Mut. Ins. Co., 467 N.W.2d 255 (Iowa 1991).

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b. Evidence, Discovery, Witnesses, and Privileges

§ 1398. Constitutionality of procedural rules governing evidence including burden of proof, competency, and discovery

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3195, 3457, 3458, 3463, 3464

Unless they are unreasonably discriminatory, rules regulating presumptions, the burden of proof, admissibility of evidence, competency of witnesses, and discovery do not violate equal protection.

Statutes or rules dealing with the burden of proof,[1] presumptions,[2] admissibility of evidence,[3] and the weight and sufficiency of the evidence have been sustained in the face of equal protection challenges.[4] Among the statutes considered not to deny equal protection are a dead man's act,[5] a statute declaring when a witness is mentally competent to testify,[6] and a statute preventing a plaintiff from testing the credibility of a defendant motorist by introducing evidence of the defendant's traffic convictions.[7] However, a statute that permits a condemnee but not a condemnor to introduce certain evidence is invalid.[8]

Privileges.

A corporate defendant is not deprived of equal protection because all communications between an employee and the corporation's attorney are not privileged.[9] A statute abrogating the physician-patient privilege in cases involving child abuse does not violate equal protection since a legislature has a rational basis for enacting legislation dealing with the serious problem of child abuse.[10] Other statutes dealing with privileges that have been found consistent with equal protection include ones extending a protective privilege to communications between a psychologist and a patient[11] or denying a psychotherapist-patient privilege to a communication relevant to an issue concerning the mental or emotional condition of a patient, if that issue has been tendered by the patient.[12]

Discovery.

Rules allowing the discovery of the financial information of a corporate defendant to support a claim for punitive damages,[13] allowing discovery of the existence and contents of insurance agreements, but not rendering those agreements admissible,[14] and authorizing the discovery of police investigative files have been upheld in the face of equal protection challenges.[15]

Footnotes

1 **Negligence of bailee**
Fla.—Reserve Ins. Co. v. Gulf Florida Terminal Co., 386 So. 2d 550 (Fla. 1980).

2 Ky.—Kentucky Harlan Coal Co. v. Holmes, 872 S.W.2d 446 (Ky. 1994).
Presumption of negligence against electric company
Iowa—Adam v. T. I. P. Rural Elec. Co-op., 271 N.W.2d 896 (Iowa 1978).
Presumption of negligence against railroad
Ala.—Atlantic Coast Line R. Co. v. Smith, 38 Ala. App. 120, 78 So. 2d 663 (1954).
Failure to signal at railroad crossing
U.S.—Atlantic Coast Line R. Co. v. Ford, 287 U.S. 502, 53 S. Ct. 249, 77 L. Ed. 457 (1933).
Undue influence by attorney
Mo.—Pasternak v. Mashak, 428 S.W.2d 565 (Mo. 1967).
Skier's responsibility for accident
Colo.—Pizza v. Wolf Creek Ski Development Corp., 711 P.2d 671, 55 A.L.R.4th 607 (Colo. 1985).

3 U.S.—Murphy v. Houma Well Service, 413 F.2d 509 (5th Cir. 1969).
Ohio—Russell v. Wolford, 60 Ohio App. 2d 134, 14 Ohio Op. 3d 105, 395 N.E.2d 904 (10th Dist. Franklin County 1978).
Hearsay exception for medical reports
Ga.—Bell v. Austin, 278 Ga. 844, 607 S.E.2d 569 (2005).
Blood alcohol test
Mich.—Bufford v. Brent, 115 Mich. App. 146, 320 N.W.2d 323 (1982).
Failure to wear seat belt
Ga.—C.W. Matthews Contracting Co., Inc. v. Gover, 263 Ga. 108, 428 S.E.2d 796 (1993).
Use of seat belt
Application of statute precluding evidence of seat belt use "in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle," including action against an automobile manufacturer involving an allegedly defective seat belt, did not violate an injured driver's equal protection rights, as the rule prevented any party from introducing evidence of use or failure to use seat belts, and it was not shown that the legislative distinction was without reasonable basis.
Minn.—Olson v. Ford Motor Co., 558 N.W.2d 491 (Minn. 1997).
Common-law marriage of survivor
Statute permitting introduction of evidence in wrongful death action of the ceremonial remarriage of surviving spouse, but prohibiting any reference to common-law marriage, was constitutional.
U.S.—Conway v. Chemical Leaman Tank Lines, Inc., 525 F.2d 927, 1 Fed. R. Evid. Serv. 193 (5th Cir. 1976), on reh'g on other grounds, 540 F.2d 837, 1 Fed. R. Evid. Serv. 193 (5th Cir. 1976).

Limiting use of coroner's report

Mo.—State ex rel. Collins v. Donelson, 557 S.W.2d 707 (Mo. Ct. App. 1977).

Confidentiality of superintendent of banks' report

Nev.—State ex rel. Tidvall v. Eighth Judicial Dist. Court, In and For Clark County, 91 Nev. 520, 539 P.2d 456 (1975).

4 Colo.—Dahman v. Ford Leasing Development Co., 492 P.2d 875 (Colo. App. 1971).

Standard of proof in probate court

Cal.—Estate of McGowan, 35 Cal. App. 3d 611, 111 Cal. Rptr. 39 (1st Dist. 1973).

Remarriage and adoption of child

Refusal to admit evidence of remarriage of deceased's widow and adoption of the deceased's child in mitigation of damages in a wrongful death action did not deny equal protection although evidence of the death of a beneficiary is admissible.

Ill.—Hardware State Bank v. Cotner, 55 Ill. 2d 240, 302 N.E.2d 257 (1973).

5 Colo.—Music City, Inc. v. Duncan's Estate, 185 Colo. 245, 523 P.2d 983 (1974).

6 Ga.—Ambles v. State, 259 Ga. 406, 383 S.E.2d 555 (1989).

7 Mich.—Azzaro v. Stupar, 17 Mich. App. 170, 169 N.W.2d 151 (1969).

8 Ga.—Georgia Power Co. v. Brooks, 207 Ga. 406, 62 S.E.2d 183 (1950).

9 Ill.—Golminas v. Fred Teitelbaum Const. Co., 112 Ill. App. 2d 445, 251 N.E.2d 314 (1st Dist. 1969).

10 Mo.—State v. Ward, 745 S.W.2d 666 (Mo. 1988).

11 N.J.—Kerr v. Kerr, 129 N.J. Super. 291, 323 A.2d 518 (App. Div. 1974).

12 U.S.—Caesar v. Mountanos, 542 F.2d 1064 (9th Cir. 1976).

13 U.S.—Vollert v. Summa Corp., 389 F. Supp. 1348, 19 Fed. R. Serv. 2d 1354 (D. Haw. 1975).

14 U.S.—Helms v. Richmond-Petersburg Turnpike Authority, 52 F.R.D. 530 (E.D. Va. 1971).

N.C.—Marks v. Thompson, 282 N.C. 174, 192 S.E.2d 311 (1972).

15 U.S.—Denver Policemen's Protective Ass'n v. Lichtenstein, 660 F.2d 432 (10th Cir. 1981).

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b. Evidence, Discovery, Witnesses, and Privileges

§ 1399. Medical malpractice cases

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3195, 3457, 3458, 3463, 3464

Statutes dealing with expert witnesses, the admissibility of evidence, and discovery in medical malpractice cases have generally withstood equal protection challenges.

Statutes that require that a plaintiff disclose an expert witness[1] or produce an expert to prove the allegations of medical negligence,[2] require that an expert witness be competent to testify[3] or be a similarly situated health care provider,[4] or grant the defendant the privilege not to give expert opinion testimony against the defendant have been upheld in the face of equal protection challenges.[5]

A statute does not violate equal protection by disallowing evidence of a health care provider's liability insurance coverage,[6] specifying whether or when a medical malpractice panel's recommendation is admissible,[7] or making records and proceedings of hospital medical review committees privileged and nondiscoverable.[8] A rule precluding ex parte contact with an opponent's

physicians does not deny defendant physicians equal protection, where other means of discovery are available, and the rule was justified by a public policy favoring the physician-patient privilege and the patient's right to privacy.[9]

Footnotes

1 Iowa—Kennis v. Mercy Hosp. Medical Center, 491 N.W.2d 161 (Iowa 1992).

2 Ariz.—Morrell v. St. Luke's Medical Center, 27 Ariz. App. 486, 556 P.2d 334 (Div. 1 1976).

3 Ohio—Denicola v. Providence Hospital, 57 Ohio St. 2d 115, 11 Ohio Op. 3d 290, 387 N.E.2d 231 (1979).

Contiguous state limitation

Tenn.—Sutphin v. Platt, 720 S.W.2d 455 (Tenn. 1986).

4 Ala.—Plitt v. Griggs, 585 So. 2d 1317 (Ala. 1991).

5 N.H.—Carson v. Maurer, 120 N.H. 925, 424 A.2d 825, 12 A.L.R.4th 1 (1980) (rejected on other grounds by, Gourley ex rel. Gourley v. Nebraska Methodist Health System, Inc., 265 Neb. 918, 663 N.W.2d 43 (2003)) and (overruled on other grounds by, Community Resources for Justice, Inc. v. City of Manchester, 154 N.H. 748, 917 A.2d 707 (2007)).

6 Ariz.—Eastin v. Broomfield, 116 Ariz. 576, 570 P.2d 744 (1977).

7 U.S.—Woods v. Holy Cross Hospital, 591 F.2d 1164 (5th Cir. 1979).

Ohio—Beatty v. Akron City Hospital, 67 Ohio St. 2d 483, 21 Ohio Op. 3d 302, 424 N.E.2d 586 (1981).

Unanimous and nonunanimous decisions

Different treatment concerning the admissibility of unanimous and nonunanimous decisions of a medical malpractice panel does not violate equal protection.

N.J.—Suchit v. Baxt, 176 N.J. Super. 407, 423 A.2d 670 (Law Div. 1980).

8 Ill.—Jenkins v. Wu, 102 Ill. 2d 468, 82 Ill. Dec. 382, 468 N.E.2d 1162, 20 Ed. Law Rep. 658 (1984).

9 Miss.—Tinnon v. Martin, 716 So. 2d 604 (Miss. 1998).

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16B C.J.S. Constitutional Law § 1400

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b. Evidence, Discovery, Witnesses, and Privileges

§ 1400. Paternity cases

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3195, 3457, 3458, 3463, 3464

Statutes dealing with presumptions and the use of blood tests in paternity cases have generally been upheld in the face of equal protection challenges.

Statutes have been upheld, in the face of equal protection challenges, which permit a court to order a blood test only upon the request of the putative father and preclude the admission of any results except those excluding the putative father.[1] Also, a statute providing that if blood tests show by clear and convincing evidence that the alleged father is not the father of the child, the court may dismiss the paternity suit with prejudice has been upheld.[2]

Equal protection is not denied by the application of a conclusive statutory presumption of paternity to render a father liable for the support of a child conceived while the party was married to the child's mother.[3] A statute excluding, in a filiation proceeding, the respondent's uncorroborated proof of access by others to the woman involved does not violate equal protection.[4]

Footnotes

1 Mich.—Klein v. Franks, 111 Mich. App. 316, 314 N.W.2d 602 (1981).

2 Tex.—In Interest of B—-M—-N—-, 570 S.W.2d 493 (Tex. Civ. App. Texarkana 1978).

3 Cal.—County of San Diego v. Brown, 80 Cal. App. 3d 297, 145 Cal. Rptr. 483 (4th Dist. 1978).

4 N.Y.—"HH" v. "II," 31 N.Y.2d 154, 335 N.Y.S.2d 274, 286 N.E.2d 717 (1972).

16B C.J.S. Constitutional Law § 1401

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6. Procedural Requirements

c. Trial or Hearing

§ 1401. Rules regarding trials and hearings

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3462, 3830

Equal protection may be denied when certain persons are denied a hearing but not by statutes giving certain actions preference.

Denying a person a hearing constitutes a denial of equal protection under various circumstances.[1]

The application of a statute authorizing a court to provide court reporters for matters heard by referees to rich and poor alike does not violate equal protection.[2]

The statutes or matters relating to a trial or hearing that have been considered not to violate equal protection include a requirement of an early trial and the simplification of issues in a forcible entry and wrongful detainer actions,[3] a preference to ejectment actions in populous counties,[4] and a requirement that all testimony in divorce proceedings be given in a courtroom before the trial justice.[5]

Equal protection is not violated by a denial of the right to counsel at public expense in contempt proceedings although the right to counsel is afforded in criminal prosecutions.[6]

Footnotes

1 **Unmarried parent when custody challenged**
U.S.—Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972).
Father of illegitimate child in adoption proceeding
Ill.—People ex rel. Slawek v. Covenant Children's Home, 52 Ill. 2d 20, 284 N.E.2d 291 (1972).
Parent of illegitimate child seeking visitation
W. Va.—J. M. S. v. H. A., 161 W. Va. 433, 242 S.E.2d 696 (1978).
Guardianship of parent
Ill.—In Interest of Anast, 22 Ill. App. 3d 750, 318 N.E.2d 18 (1st Dist. 1974).

2 Cal.—In re James R., 83 Cal. App. 3d 977, 148 Cal. Rptr. 145 (2d Dist. 1978).

3 U.S.—Lindsey v. Normet, 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972).

4 Ala.—White v. City Federal Sav. & Loan Ass'n, 47 Ala. App. 556, 258 So. 2d 900 (Civ. App. 1972).

5 R.I.—Rheaume v. Rheaume, 107 R.I. 500, 268 A.2d 437 (1970).

6 Ohio—Retz v. Retz, 62 Ohio App. 2d 158, 16 Ohio Op. 3d 341, 405 N.E.2d 313 (2d Dist. Montgomery County 1978).

16B C.J.S. Constitutional Law § 1402

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c. Trial or Hearing

§ 1402. Availability of jury trial

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3462, 3830

Some courts do not apply a fundamental rights analysis when determining if the denial of a jury trial constitutes a denial of equal protection, and the right to equal protection is not violated by statutes denying jury trials in certain classes of cases.

Unless the nature of the underlying action warrants that treatment, classifications relating to determining the right to a trial by jury do not involve a fundamental right in the context of an equal protection challenge.[1] However, where proceedings could result in a substantial loss of personal liberty, a state violates equal protection if it grants jury trials to some groups while denying them to others unless the different treatment is shown to be necessary to achieve a compelling state interest.[2]

In light of the legitimate objectives of protecting a state treasury and facilitating the judicial process, a statute denying a jury trial in actions against the state, a state agency, or a political subdivision does not violate equal protection.[3] Similarly, a statute does not deny equal protection by allowing a manufacturer or distributor of a vaccine a jury trial on an indemnity claim asserted against it by the United States while denying a jury trial in an action against the United States by one who has suffered an adverse

reaction to the vaccine.[4] The refusal of a jury trial to public employees or to their representative organizations, while granting a jury trial to those in private industries, does not violate equal protection since a legitimate distinction is constitutionally permissible between public and private employment.[5]

Equal protection is not violated by statutes precluding a jury trial in various proceedings,[6] such as a mandamus action,[7] injunction proceedings,[8] summary contempt proceedings,[9] or certain methods of enforcing zoning ordinances.[10] The Fourteenth Amendment does not guarantee attorneys the right to jury trials of fee disputes.[11]

A limitation on the number of persons for petit juries in civil actions seeking recoveries of less than a specified amount does not deny equal protection.[12]

A statute that provides that in a trial of a wrongful death action, the jury may not be informed of the statutory limitation upon the amount of recovery does not deny equal protection.[13]

Footnotes

1 Vt.—In re Letourneau, 168 Vt. 539, 726 A.2d 31 (1998).
In context of state legislation affecting state trials
Ala.—Reed v. Brunson, 527 So. 2d 102 (Ala. 1988).
As to the constitutional right to a jury trial, see C.J.S., Juries §§ 5 to 16.

2 Cal.—Regional Center of Orange v. King, 80 Cal. App. 3d 860, 146 Cal. Rptr. 24 (4th Dist. 1978).

3 La.—Rudolph v. Massachusetts Bay Ins. Co., 472 So. 2d 901 (La. 1985).
As to the availability of a jury trial in actions by and against the sovereign, see C.J.S., Juries §§ 41 to 44.

4 U.S.—Ducharme v. Merrill-National Laboratories, 574 F.2d 1307 (5th Cir. 1978).

5 N.Y.—Rankin on Behalf of Bd. of Ed. of City of New York v. Shanker, 23 N.Y.2d 111, 295 N.Y.S.2d 625, 242 N.E.2d 802 (1968).

6 U.S.—Chappell Chemical & Fertilizer Co. v. Sulphur Mines Co. of Virginia, 172 U.S. 474, 19 S. Ct. 268, 43 L. Ed. 520 (1899).
As to actions in which there is a right to a trial by jury, see C.J.S., Juries §§ 23 to 40.

7 U.S.—Southern Ry. Co. v. City of Durham, N.C., 266 U.S. 178, 45 S. Ct. 51, 69 L. Ed. 231 (1924).

8 Mass.—District Attorney For Northern Dist. v. Three Way Theatres Corp., 371 Mass. 391, 357 N.E.2d 747 (1976).

9 Conn.—Wilson v. Cohen, 222 Conn. 591, 610 A.2d 1177 (1992).

10 Vt.—In re Letourneau, 168 Vt. 539, 726 A.2d 31 (1998).

11 N.J.—Application of LiVolsi, 85 N.J. 576, 428 A.2d 1268, 17 A.L.R.4th 972 (1981).

12 Ga.—Wall v. Citizens and Southern Bank of Houston County, 247 Ga. 216, 274 S.E.2d 486 (1981).

13 N.H.—Gibbs v. Prior, 107 N.H. 218, 220 A.2d 151 (1966).

16B C.J.S. Constitutional Law § 1403

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6. Procedural Requirements

c. Trial or Hearing

§ 1403. Selection of jurors

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3462, 3830

Both jurors and litigants have equal protection rights relating to the nondiscriminatory selection of jurors and use of preemptory challenges.

Both jurors and litigants have an equal protection right to jury selection procedures that are free from state-sponsored stereotypes.[1] A substantial underrepresentation of an identifiable group on a jury panel is constitutionally impermissible under equal protection principles when it results from purposeful discrimination.[2] However, the procedure of calling jurors on the telephone to notify them that they may be required to appear does not deny equal protection on the theory that the use of the telephone systematically excludes individuals who cannot afford one.[3]

The equal protection clause prohibits the use of peremptory strikes in a purposefully discriminatory manner.[4] However, equal protection is not violated by a difference, between criminal and civil cases, as to the reasons for which a juror may be challenged for cause.[5]

CUMULATIVE SUPPLEMENT

Cases:

A well-established burden-shifting framework governs claims that the prosecution exercised peremptory strikes in a discriminatory manner, in violation of the Equal Protection Clause: first, the defendant must make out a prima facie case by showing that the totality of the relevant facts give rise to an inference of discriminatory purpose in the exercise of peremptory strikes; second, once the defendant has made out a prima facie case, the burden shifts to the State to explain adequately the exclusion by offering permissible non-discriminatory/neutral justifications for the strikes; and third, if a non-discriminatory/neutral explanation is tendered, the trial court must then decide whether the opponent of the strike has proved purposeful discrimination. U.S. Const. Amend. 14. Ledford v. Warden, Georgia Diagnostic Prison, 975 F.3d 1145 (11th Cir. 2020).

A court may find intent to discriminate during jury selection, in violation of equal protection, when the reason provided for striking a prospective juror, during the *Batson* inquiry, applies with equal force to a juror that the same party declined to strike, who is outside the protected group of the stricken juror. U.S. Const. Amend. 5. United States v. Hughes, 840 F.3d 1368 (11th Cir. 2016).

The reason given for the peremptory strike during jury selection, on a *Batson* challenge raising an equal protection claim, need not be a good reason, and it can even be an irrational, silly, or superstitious reason, as long as it is not a discriminatory reason. U.S. Const. Amend. 5. United States v. Hughes, 840 F.3d 1368 (11th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994).
Ind.—Williams v. State, 669 N.E.2d 1372 (Ind. 1996).
As to the selection of jurors, generally, see C.J.S., Juries §§ 262 to 283.

2 U.S.—Hirst v. Gertzen, 676 F.2d 1252, 10 Fed. R. Evid. Serv. 1506 (9th Cir. 1982) (disapproved of on other grounds by, Massey v. Smith, 555 F. Supp. 743 (N.D. Ind. 1983)) and (disapproved of on other grounds by, Emory v. Duckworth, 555 F. Supp. 985 (N.D. Ind. 1983)).

3 Alaska—Bachner v. Pearson, 479 P.2d 319, 8 U.C.C. Rep. Serv. 515 (Alaska 1970).

4 S.C.—Payton v. Kearse, 329 S.C. 51, 495 S.E.2d 205 (1998).
W. Va.—Parham v. Horace Mann Ins. Co., 200 W. Va. 609, 490 S.E.2d 696 (1997).
Rights of potential juror
Delay in requiring striking party to articulate reasons for exercising peremptory challenge until after trial is completed prevents vindication of equal protection rights of any venireperson wrongfully excluded from sitting on jury where challenge appeared to be racially motivated.
W. Va.—Parham v. Horace Mann Ins. Co., 200 W. Va. 609, 490 S.E.2d 696 (1997).
Scope of review
Because the effect of a peremptory strike of a juror in violation of equal protection is so pervasive, it is not subject to harmless error review.
U.S.—SmithKline Beecham Corp. v. Abbott Laboratories, 740 F.3d 471 (9th Cir. 2014).

5 Colo.—Faucett v. Hamill, 815 P.2d 989 (Colo. App. 1991).

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7. Regulations Concerning Judgments

§ 1404. Requirements regarding judgments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3465

If persons similarly situated are treated alike, a state, either through the legislature or through the action of its courts, may make regulations concerning judgments, without violating equal protection.

Subject to the limitation that persons similarly situated are affected alike, a state may, without violating equal protection, make regulations or rules relating to judgments,[1] including bond requirements to secure compliance with the judgment,[2] and prerequisites to obtaining a modification of a divorce or marital dissolution judgment.[3] A court's power in this respect is subject to the limitation that a judgment rendered by it does not violate equal protection,[4] but this guarantee does not obligate a court to decide a case wrongly because, merely by inadvertence, it has decided a similar case in that manner.[5]

Footnotes

1 U.S.—Rietz v. Butler, 322 F. Supp. 1029 (N.D. Ga. 1971).

Ga.—Fidelity Nat. Bank v. Km General Agency, Inc., 244 Ga. 753, 262 S.E.2d 67 (1979).

Or.—Newhouse v. Newhouse, 271 Or. 109, 530 P.2d 848 (1975).

2 Ala.—Collier v. Collier, 57 Ala. App. 208, 326 So. 2d 769 (Civ. App. 1976).

Wash.—State v. Pearson, 13 Wash. App. 870, 538 P.2d 567 (Div. 1 1975).

3 Ohio—Alban v. Alban, 1 Ohio App. 3d 146, 439 N.E.2d 963 (10th Dist. Franklin County 1981).

Separation agreement

Fact that spouse who bargains for fixed measure of support is required to comply with agreement, while court-ordered support may be modified, does not create unreasonable classification rendering refusal to modify agreement judicially violative of equal protection.

Cal.—Knodel v. Knodel, 14 Cal. 3d 752, 122 Cal. Rptr. 521, 537 P.2d 353 (1975).

4 U.S.—Smart v. Jones, 530 F.2d 64 (5th Cir. 1976).

Ala.—Field v. Field, 382 So. 2d 1132 (Ala. Civ. App. 1980).

Prejudgment interest at court's whim

Procedure under which trial court, after conclusion of trial, may, on its own initiative, award compound prejudgment interest on subjective basis that is not discernible would be unconstitutional under equal protection guarantee.

Tex.—City of Austin v. Foster, 623 S.W.2d 672 (Tex. Civ. App. Austin 1981), writ refused n.r.e., (Jan. 13, 1982).

5 La.—State v. Gowland, 189 La. 80, 179 So. 41 (1938).

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7. Regulations Concerning Judgments

§ 1405. Rules governing dismissals and default judgments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3465

Rules dealing with dismissals and default judgments have generally been found to be consistent with equal protection.

A voluntary dismissal statute does not violate equal protection by providing this right to plaintiffs and not to defendants, since the statute protected the right of plaintiffs, counterclaimants, or third-party plaintiffs to control their claims, and did not result in a benefit at the expense of others who were similarly situated.[1] A rule restricting dismissals for failure to prosecute, if the case is noted for trial prior to the hearing on the motion to dismiss, does not violate equal protection since defendants facing inactive civil claims are not similarly situated to potential defendants who have not been sued.[2]

A requirement that a motion to vacate a default judgment be filed within a specified number of days from the date of the judgment does not violate equal protection.[3] A rule that a foreign corporation that received notice of the action may be subjected to a default judgment without further notice does not deny equal protection.[4]

Footnotes

1 Ill.—Gibellina v. Handley, 127 Ill. 2d 122, 129 Ill. Dec. 93, 535 N.E.2d 858 (1989).

2 Wash.—Wallace v. Evans, 131 Wash. 2d 572, 934 P.2d 662 (1997).

3 Iowa—Mishler v. Stouwie, 301 N.W.2d 744 (Iowa 1981).

4 Iowa—Kreft v. Fisher Aviation, Inc., 264 N.W.2d 297 (Iowa 1978).

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7. Regulations Concerning Judgments

§ 1406. Enforcement of judgments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3465

While courts have generally upheld requirements relating to the enforcement of judgments despite equal protection challenges, a body execution against an indigent debtor is unconstitutional.

Courts have upheld, in the face of equal protection challenges, requirements that foreign judgments be reduced to domestic ones[1] and that all suits on foreign judgments be brought within a specified number of years after rendition,[2] statutes allowing a judgment creditor to propound written interrogatories to a judgment debtor represented by counsel but not to a judgment debtor not represented by an attorney,[3] and a statute that authorizes a court to release property from a judgment lien if it finds that the release is not requested for the purpose of avoiding payment and will not unduly reduce the security.[4]

The mere fact that indigents are at a relative disadvantage to meet judgments against them and are thereby effectively deprived of some privileges is not enough to demonstrate an equal protection violation.[5] However, a body execution statute violates the equal protection rights of an indigent debtor, who suffers a punishment not inflicted on solvent persons.[6]

Enforcement of a foreign decree awarding custody of a child to a mother, who is a resident and citizen of a foreign country, does not deprive the child of the right to equal protection.[7]

Exempting contributions to a teachers' retirement system from division as marital property is rationally related to the legitimate objective of protecting teachers upon retirement, and, therefore, does not violate equal protection.[8]

A fee imposed by a child support enforcement agency for each payment processed by it was rationally related to the value of the benefit conferred upon the payers, who obtained verification of their payments, and did not violate equal protection.[9]

Footnotes

1 Va.—Carter v. Carter, 232 Va. 166, 349 S.E.2d 95 (1986).

2 U.S.—Watkins v. Conway, 385 U.S. 188, 87 S. Ct. 357, 17 L. Ed. 2d 286 (1966).
Va.—Carter v. Carter, 232 Va. 166, 349 S.E.2d 95 (1986).

3 Cal.—MacDonald v. Superior Court, 75 Cal. App. 3d 692, 141 Cal. Rptr. 667 (2d Dist. 1977).

4 Neb.—Grosvenor v. Grosvenor, 206 Neb. 395, 293 N.W.2d 96 (1980).

5 U.S.—Shultz v. Heyison, 439 F. Supp. 857 (M.D. Pa. 1975).

6 Colo.—Kinsey v. Preeson, 746 P.2d 542, 79 A.L.R.4th 213 (Colo. 1987).
A.L.R. Library
Validity, construction, and effect of body execution statutes allowing imprisonment based on judgment, debt, or the like—modern cases, 79 A.L.R.4th 232.

7 U.S.—Schleiffer v. Meyers, 644 F.2d 656 (7th Cir. 1981).

8 Ky.—Waggoner v. Waggoner, 846 S.W.2d 704, 81 Ed. Law Rep. 347 (Ky. 1992).

9 Ohio—Granzow v. Bureau of Support of Montgomery County, 54 Ohio St. 3d 35, 560 N.E.2d 1307 (1990).

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8. Appeal

§ 1407. Right to appeal

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3466

Although the right to appeal is not fundamental, a state may not arbitrarily deny that right to certain litigants.

Although the right to appeal is not a fundamental right with respect to equal protection,[1] a state that provides an appellate system may not capriciously or arbitrarily deny it to some litigants without violating the Equal Protection Clause.[2] However, equal protection requirements do not require uniformity of appellate procedure.[3]

A statute that allows an appeal in civil cases to one party without allowing it on equal terms to the other may be invalid[4] but does not violate equal protection where it denies the right of appeal to a plaintiff who exercised the option to select a small claims court as the initial forum.[5] A rule dealing with the need to file an application to appeal when relief from a judgment is denied, but allowing a direct appeal when it is granted, may be justified by the fact that the denial retains the status quo, while the grant may make further court proceedings necessary, if it is not overturned.[6]

As a matter of equal protection, a state must provide indigent prisoners with the basic tools of an appeal, such as a transcript,[7] when those means are available to other prisoners who can afford them.[8] A statute may permissibly give a prisoner the right to appeal in a habeas corpus case only on a showing of probable cause while giving the warden the right to appeal without having to obtain a certificate of probable cause.[9]

Equal protection is not denied by the imposition of appellate filing fees.[10] While there is authority that equal protection does not require that an appellate court waive all filing fees to indigents,[11] a criminal defendant does not lose the constitutional right to appeal because of inability to pay filing fees.[12]

Equal protection rights that apply once the right to appeal has been granted are not limited to criminal defendants.[13]

The Equal Protection Clause is not violated by a statute that prescribes the number of judges that must concur in an opinion as to a particular matter.[14]

Footnotes

1 Ark.—Boshears v. Arkansas Racing Commission, 258 Ark. 741, 528 S.W.2d 646 (1975).

2 U.S.—Lindsey v. Normet, 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972).
Mo.—In re Marriage of Valleroy, 548 S.W.2d 857 (Mo. Ct. App. 1977).

3 Mich.—Moore v. Spangler, 401 Mich. 360, 258 N.W.2d 34 (1977).

4 Ill.—Funkhouser v. Randolph, 287 Ill. 94, 122 N.E. 144 (1919).
Ohio—Maynard v. B. F. Goodrich Co., 144 Ohio St. 22, 28 Ohio Op. 558, 56 N.E.2d 195 (1944).

5 Utah—Liedtke v. Schettler, 649 P.2d 80 (Utah 1982).

6 Ga.—Schiesser v. Ross, 256 Ga. 414, 349 S.E.2d 745 (1986).

7 § 1410.

8 U.S.—Greene v. Brigano, 123 F.3d 917, 1997 FED App. 0253P (6th Cir. 1997).

9 Ga.—Reed v. Hopper, 235 Ga. 298, 219 S.E.2d 409 (1975).

10 Mo.—In re Marriage of Valleroy, 548 S.W.2d 857 (Mo. Ct. App. 1977).
Adverse welfare decision
U.S.—Ortwein v. Schwab, 410 U.S. 656, 93 S. Ct. 1172, 35 L. Ed. 2d 572 (1973).

11 U.S.—Hill v. State of Mich., 488 F.2d 609 (6th Cir. 1973).
Fla.—McGriff v. McGriff, 392 So. 2d 914 (Fla. 3d DCA 1980).

12 Utah—State v. Johnson, 700 P.2d 1125 (Utah 1985).
As to the effect of indigency, generally, see § 1410.

13 Wis.—In re Smythe, 225 Wis. 2d 456, 592 N.W.2d 628 (1999).

14 U.S.—State of Ohio ex rel. Bryant v. Akron Metropolitan Park Dist. for Summit County, 281 U.S. 74, 50 S. Ct. 228, 74 L. Ed. 710, 66 A.L.R. 1460 (1930).

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8. Appeal

§ 1408. Bond or compliance with judgment

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3466

Requirements for an appeal bond do not necessarily violate equal protection, unless they are disproportionate to the amount that could be recovered from an indigent.

The requirement of a bond as a prerequisite to an appeal is not necessarily a denial of equal protection.[1] Not requiring a bond in case of an appeal, where the appellant's liability is insured, does not deny equal protection.[2] Furthermore, a requirement for security on appeal does not violate equal protection if a court is required to waive it in the case of indigency.[3] However, a requirement of a bond in twice the amount of the judgment is a denial of equal protection, where it is unrelated to any judgment actually recoverable from an indigent,[4] as is a requirement of a bond[5] for twice the rental value,[6] or the payment of that amount,[7] in the case of an appeal by the defendant in a forcible entry and detainer action. A statute requiring landlords to give treble bonds from small claims judgments in security deposit cases has been upheld.[8]

The refusal of a court to consider an appeal from a judgment unless the appellant complies with an order issued in supplementary proceedings for the collection of the judgment is not a denial of equal protection.[9] Requiring tenants in a rent dispute case to

pay the base rent to the landlord during the pendency of their appeal and pay into court the amount of the disputed increase in rent is also consistent with equal protection.[10]

Footnotes

1 Ind.—Strube v. Sumner, 385 N.E.2d 948 (Ind. Ct. App. 1978).
R.I.—Walka v. Bestwick, 115 R.I. 38, 340 A.2d 115 (1975).
Stay of execution
Mo.—Rice v. Lucas, 560 S.W.2d 850 (Mo. 1978).
Indigents
R.I.—Jones v. Aciz, 109 R.I. 612, 289 A.2d 44 (1972).
Wash.—Bowman v. Waldt, 9 Wash. App. 562, 513 P.2d 559 (Div. 1 1973).

2 Mich.—Wolodzko v. Burdick, 382 Mich. 528, 170 N.W.2d 9 (1969).

3 Mont.—Red Lodging v. Miller, 2001 MT 135, 305 Mont. 477, 29 P.3d 477 (2001).

4 Mont.—Merchants Ass'n v. Conger, 185 Mont. 552, 606 P.2d 125 (1979).

5 Ill.—Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972).
Me.—Harrington v. Harrington, 269 A.2d 310 (Me. 1970).

6 U.S.—Lindsey v. Normet, 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972).
Ariz.—Blair v. Stump, 127 Ariz. 7, 617 P.2d 791 (Ct. App. Div. 1 1980).

7 Alaska—Modrok v. Marshall, 523 P.2d 172 (Alaska 1974).

8 Mass.—Hampshire Village Associates v. District Court of Hampshire, 381 Mass. 148, 408 N.E.2d 830 (1980).

9 U.S.—National Union of Marine Cooks and Stewards v. Arnold, 348 U.S. 37, 75 S. Ct. 92, 99 L. Ed. 46 (1954).

10 Mass.—Kargman v. Dustin, 5 Mass. App. Ct. 101, 359 N.E.2d 971 (1977).

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9. Costs and Fees

§ 1409. Regulation of costs and fees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3242, 3467

Unless it effects an arbitrary or unreasonable classification, a statute that imposes liability for costs on one of the parties to an action is consistent with equal protection.

Statutory provisions or governmental actions relating to costs and fees that have a rational basis are not violative of equal protection.[1] Jury fees have generally been upheld,[2] even if they are collected when making a jury demand, and a jury is subsequently waived.[3] However, a statute imposing costs violates equal protection if it does not operate uniformly on all persons similarly situated.[4]

A court may require that a specified party bear the costs or expenses of certain proceedings.[5] A statute relieving a public officer from liability for costs in suits instituted in the officer's official capacity is valid.[6] Equal protection is not violated by requiring the payment of filing fees as a condition precedent to obtaining a discharge in bankruptcy.[7] A statute requiring that stockholders who unsuccessfully bring a derivative action are liable for the corporation's costs and expenses, and may be required to post security for their payment, has been held valid although it applies only if the plaintiff stockholders represent less than a stated

percentage of the stock or if their stock has less than a stated market value.[8] A similar statute requiring a shareholder to post security for the corporation's expenses, if the court finds that there is no reasonable probability that the corporation will benefit from the action, does not deny equal protection although there is no comparable provision requiring that the corporation post security for the plaintiff's expenses if it appears that the corporation will benefit from the action.[9]

A requirement that unsuccessful applicants for appellate relief from certain types of judgments pay an additional assessment was upheld, as the statute was reasonably tailored to achieve a state's legitimate objectives of discouraging frivolous appeals, compensating appellees for intangible costs of litigation, and conserving judicial resources, and the statute did not single out a narrow class of defendants for discriminatory treatment but applied both to plaintiffs and defendants.[10]

There is a division of opinion whether an additional fee imposed on persons filing for divorce, to fund a social services program, violates equal protection or is rationally related to a legitimate government purpose.[11]

Footnotes

1 U.S.—Bankers Life and Cas. Co. v. Crenshaw, 486 U.S. 71, 108 S. Ct. 1645, 100 L. Ed. 2d 62 (1988).
Cal.—Dickinson v. Kaiser Foundation Hospitals, 112 Cal. App. 3d 952, 169 Cal. Rptr. 493 (2d Dist. 1980).
Mich.—Foreman v. Treasurer of Oakland County, 57 Mich. App. 231, 226 N.W.2d 67, 76 A.L.R.3d 1108 (1974).
Wash.—City of Seattle v. Fontanilla, 128 Wash. 2d 492, 909 P.2d 1294 (1996).
Witness travel costs
Party seeking award of costs for travel by out-of-state witness failed to show that statute limiting award to in-state travel costs was arbitrary and had no legitimate state purpose; statute was means of encouraging parties to limit litigation costs and to conserve judicial resources by eliminating disputes over reasonableness of out-of-state travel.
Vt.—Jordan v. Nissan North America, Inc., 176 Vt. 465, 2004 VT 27, 853 A.2d 40 (2004).
Probate filing fee
Statute imposing probate filing fee of percentage of gross estate similarly treats all similarly situated probate litigants and thus does not violate equal protection.
Wis.—Treiber v. Knoll, 135 Wis. 2d 58, 398 N.W.2d 756 (1987).

2 Conn.—Robertson v. Apuzzo, 170 Conn. 367, 365 A.2d 824 (1976).
Ill.—Fried v. Danaher, 46 Ill. 2d 475, 263 N.E.2d 820 (1970).
Wis.—Portage County v. Steinpreis, 104 Wis. 2d 466, 312 N.W.2d 731 (1981).

3 Me.—Butler v. Supreme Judicial Court, 611 A.2d 987 (Me. 1992).

4 Ky.—Gabbard v. Roberts, 220 Ky. 480, 295 S.W. 438 (1927).
Unequal treatment of condemnees
Administrative judge of several counties exceeded his authority by issuing an administrative order forbidding a court clerk from attempting to collect court costs from landowners who formally demanded a jury trial in condemnation cases; it was discriminatory not to assess a prepayment fee for a jury trial for parties in certain condemnation cases while requiring it in other condemnation cases in accordance with a state statute mandating that all county court clerks collect a fee.
Okla.—Petuskey v. Cannon, 1987 OK 74, 742 P.2d 1117 (Okla. 1987).

5 N.Y.—Childs v. Childs, 69 A.D.2d 406, 419 N.Y.S.2d 533 (2d Dep't 1979).
Investigative expenses
Denial of reimbursement for investigative expenses incurred by acquitted defendant does not violate equal protection, even though state would have been authorized to recover its investigative costs if defendant had been convicted, as equal protection generally requires that similarly situated persons be treated equally, not that government and individual be treated the same for purposes of reimbursement of statutory costs.
Fla.—Board of County Com'rs, Pinellas County v. Sawyer, 620 So. 2d 757 (Fla. 1993).
As to fees on appeal, see § 1411.

6 La.—Carrere v. Reddix, 210 La. 776, 28 So. 2d 267 (1946).

7 U.S.—U.S. v. Kras, 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973).

8 U.S.—Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949).
N.Y.—Baker v. MacFadden Publications, 300 N.Y. 325, 90 N.E.2d 876 (1950).

9 Cal.—Beyerbach v. Juno Oil Co., 42 Cal. 2d 11, 265 P.2d 1 (1954).

10 U.S.—Bankers Life and Cas. Co. v. Crenshaw, 486 U.S. 71, 108 S. Ct. 1645, 100 L. Ed. 2d 62 (1988).

11 **Displaced homemaker program fee valid**
Statute requiring every person filing a divorce action to pay a fee to fund a displaced homemaker program did not violate equal protection where the fee did not significantly interfere with a person's right to obtain a divorce and was rationally related to a legitimate governmental interest of aiding displaced homemakers in obtaining economic security.
N.D.—Gange v. Clerk of Burleigh County Dist. Court, 429 N.W.2d 429 (N.D. 1988).
Domestic violence program fee invalid
A charge beyond a filing fee on petitioners for dissolution of marriage, to be paid into Domestic Violence Shelter and Service Fund, denied matrimonial litigants equal protection, by causing them to bear the cost of maintaining a public welfare program, while excluding other classes of taxpayers, without rational basis.
Ill.—Crocker v. Finley, 99 Ill. 2d 444, 77 Ill. Dec. 97, 459 N.E.2d 1346 (1984).

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9. Costs and Fees

§ 1410. Assessment of fees and costs against indigents

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3210, 3228, 3242

Inability to pay costs is a defining characteristic of an equal protection problem, and under some circumstances, a state must pay an indigent litigant's expenses.

Financial inability to pay a fee or cost is a defining characteristic of an unlawful classification.[1] The right to the equal protection prohibits unequal treatment of criminal defendants based on their poverty.[2]

Equal protection may require that a state pay an indigent's litigation expenses, such as where expert testimony is crucial to a proper defense,[3] or where a statute dealing with service by publication in proceedings to terminate parental rights discriminates against indigent persons, due to the cost of publication.[4] Indigent paternity defendants, who request the administration of blood-grouping tests, are entitled, under the guarantee of equal protection, to have the expense borne by the state.[5]

Imposing any financial condition to an indigent prisoner's exercise of the right to sue for the prisoner's liberty denies the prisoner equal protection.[6] The right to equal protection is violated by making the writ of habeas corpus available only to prisoners who

could pay necessary filing fees, without making provision for indigent prisoners.[7] An indigent inmate also has a constitutional right to counsel appointed at the state's expense if the state confers a criminal appeal as of right,[8] but not if leave to appeal is required,[9] or if a misdemeanor conviction cannot result in imprisonment.[10] Moreover, the Due Process and Equal Protection Clauses require appointment of counsel for indigent defendants, convicted on pleas of guilty or nolo contendere, who seek access to first-tier review in a court of appeals, even though such review is discretionary under state law; the court of appeals sits as error-correcting instance and thus looks to merits of claims made in a defendant's application for leave to appeal, and indigent defendants pursuing first-tier review in a court of appeals are generally ill-equipped to represent themselves.[11] So long as an indigent defendant receives effective assistance of counsel, one is not denied equal protection solely because other indigent defendants or defendants who retain their own counsel receive better representation.[12] A civil filing fee may be imposed on inmates who have funds in their prison accounts, without violating their rights to access to the courts and equal protection.[13]

An indigent's right to a free transcript is based on equal protection considerations and springs from the requirement that an indigent criminal defendant be given an opportunity to obtain as adequate appellate review of a conviction as that guaranteed to nonindigents.[14] Whether the refusal of a free transcript to an indigent denies equal protection of the law must be determined from the facts and circumstances of each case,[15] but a particularized need for the transcript need not be shown.[16]

Equal protection is not violated by the assessment of costs if the person was informed of the existence of exemptions for indigents[17] and made no claim of indigency.[18] Equal protection is not offended by requirements for proceeding in forma pauperis,[19] showing a need for an investigator paid by the state,[20] or obtaining a free transcript.[21]

Equal protection would be denied if an adoption act's provisions were construed to allow the termination of parental rights of an indigent parent who had been denied the appointment of counsel when counsel would have been available in termination proceedings under paternity and juvenile court statutes.[22] However, a statute allowing a state agency to maintain suit, on behalf of an individual, to determine the paternity of dependent children and supply counsel at no outright cost to the individual, but not to the respondent, does not deny equal protection.[23]

A waiver of an assessment for defendants lacking the ability to pay does not violate the equal protection rights of nonindigent defendants, since they do not comprise a suspect class, and there is a rational basis for requiring a court to consider a defendant's ability to pay.[24]

Footnotes

1 Pa.—Probst v. Com., Dept. of Transp., Bureau of Driver Licensing, 578 Pa. 42, 849 A.2d 1135 (2004).

2 Okla.—McMillion v. State, 1987 OK CR 193, 742 P.2d 1158 (Okla. Crim. App. 1987).
S.C.—Ex parte Lexington County, 314 S.C. 220, 442 S.E.2d 589 (1994).
W. Va.—State v. Shelton, 204 W. Va. 311, 512 S.E.2d 568 (1998).

3 Ill.—People v. Botruff, 212 Ill. 2d 166, 288 Ill. Dec. 105, 817 N.E.2d 463 (2004).
Based on sufficient showing of need
Ga.—Isaacs v. State, 259 Ga. 717, 386 S.E.2d 316 (1989).
But not for postconviction proceeding
Ill.—People v. Sanchez, 169 Ill. 2d 472, 215 Ill. Dec. 59, 662 N.E.2d 1199 (1996).
Utah—Gardner v. Holden, 888 P.2d 608 (Utah 1994).

4 Okla.—Matter of Del Moral Rodriguez, 1976 OK 82, 552 P.2d 397 (Okla. 1976).

5 Colo.—Franklin v. District Court of Tenth Judicial Dist. In and For Pueblo County, 194 Colo. 189, 571 P.2d 1072 (1977).
W. Va.—State ex rel. Graves v. Daugherty, 164 W. Va. 726, 266 S.E.2d 142 (1980).

6 Ala.—Ex parte Dozier, 827 So. 2d 774 (Ala. 2002).

7 U.S.—Smith v. Bennett, 365 U.S. 708, 81 S. Ct. 895, 6 L. Ed. 2d 39 (1961).

8 Cal.—In re Barnett, 31 Cal. 4th 466, 3 Cal. Rptr. 3d 108, 73 P.3d 1106 (2003).

Conn.—Gipson v. Commissioner of Correction, 257 Conn. 632, 778 A.2d 121 (2001).

As to the availability of an appeal to an indigent prisoner, and conditioning the right to appeal on paying a filing fee, see § 1407.

9 Conn.—Gipson v. Commissioner of Correction, 257 Conn. 632, 778 A.2d 121 (2001).

10 N.H.—State v. Westover, 140 N.H. 375, 666 A.2d 1344 (1995).

11 U.S.—Halbert v. Michigan, 545 U.S. 605, 125 S. Ct. 2582, 162 L. Ed. 2d 552 (2005).

12 Colo.—People v. District Court of El Paso County., 761 P.2d 206 (Colo. 1988).

13 Mass.—Longval v. Superior Court Dept. of Trial Court, 434 Mass. 718, 752 N.E.2d 674 (2001).

14 D.C.—Cole v. U.S., 478 A.2d 277 (D.C. 1984).

15 Okla.—Matter of Rich, 1979 OK 173, 604 P.2d 1248 (Okla. 1979).

When needed for effective defense on appeal

Ohio—State, ex rel. Greene, v. Enright, 63 Ohio St. 3d 729, 590 N.E.2d 1257 (1992).

Value of transcript demonstrated

W. Va.—State v. England, 178 W. Va. 648, 363 S.E.2d 725 (1987).

16 Ariz.—State v. Towery, 186 Ariz. 168, 920 P.2d 290 (1996).

Colo.—People v. Nord, 790 P.2d 311 (Colo. 1990).

17 Ohio—State v. White, 103 Ohio St. 3d 580, 2004-Ohio-5989, 817 N.E.2d 393 (2004).

18 N.H.—State v. Baldwin, 127 N.H. 368, 500 A.2d 693 (1985).

19 Ohio—State ex rel. Jefferson v. Ohio Adult Parole Auth., 86 Ohio St. 3d 304, 1999-Ohio-163, 714 N.E.2d 926 (1999).

20 Okla.—Plantz v. State, 1994 OK CR 33, 876 P.2d 268 (Okla. Crim. App. 1994).

21 Md.—State v. Miller, 337 Md. 71, 651 A.2d 845 (1994).

Miss.—Fleming v. State, 553 So. 2d 505 (Miss. 1989).

22 N.D.—Matter of Adoption of K.A.S., 499 N.W.2d 558 (N.D. 1993).

23 Fla.—Department of Health and Rehabilitative Services v. Heffler, 382 So. 2d 301 (Fla. 1980).

24 Okla.—State v. Claborn, 1994 OK CR 8, 870 P.2d 169 (Okla. Crim. App. 1994).

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9. Costs and Fees

§ 1411. Recovery of attorney's fees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3242, 3467

A statute that allows the recovery of attorney's fees by the prevailing party does not contravene equal protection where recovery is allowed without discrimination against the losing party. For example, statutes allowing recovery only by a successful plaintiff have been upheld when this is warranted by the police power to enforce a consumer credit law.

A statute that allows the recovery of attorney's fees by the successful party does not contravene equal protection where recovery is allowed without discrimination against the losing party.[1] Equal protection is not denied in this situation, despite the argument that had the defendant prevailed, the fee award it would have received would have been considerably less than the plaintiff's award.[2]

Although there are decisions to the effect that a statute that allows the plaintiff, but not the defendant, to recover attorney's fees is void as denying equal protection,[3] as a general rule, such a statute is sustained as enacted within the scope of the police power for the purpose of securing the performance of some duty or punishing the violation of a right.[4] Thus, statutes have been upheld that allow the recovery of counsel fees by a borrower in an action involving a consumer credit transaction,[5] a dealer under an

automobile dealer franchise law,[6] and a policyholder against an insurance company,[7] in a mandamus proceeding to enforce a statutory duty,[8] as well as a plaintiff in an action under an unfair trade practices act,[9] for the recovery of a penalty,[10] for the recovery of wages,[11] and to enforce a mechanics' lien,[12] although there is contrary authority with regard to mechanics' liens.[13]

A statute providing that if the plaintiff ultimately prevails in an action that has been transferred from a small claims court to a higher court, at the defendant's request, reasonable attorney's fees shall be allowed to the plaintiff's attorney to be taxed as costs in the case has been upheld.[14] Another statute that permits a defendant, as a prevailing party, to recover attorney's fees only when the plaintiff has not sought recovery in excess of a specified amount has also been upheld.[15]

The provision of the Equal Access to Justice Act denying reimbursement of attorney's fees and expenses to a petitioner with net worth of over $2 million[16] does not violate equal protection.[17]

A practice of denying attorney's fees to lay pro se litigants, while allowing attorney pro se litigants to recover, does not implicate equal protection since the value of the layperson's services does not have a market value.[18]

Where recovery of attorney's fees is allowed in a support action brought by a child of a marriage, equal protection requires such an award to a child born out of wedlock.[19]

Footnotes

1 Cal.—Residents Ad Hoc Stadium Com. v. Board of Trustees, 89 Cal. App. 3d 274, 152 Cal. Rptr. 585 (3d Dist. 1979).

Fees awarded unless recovery is less than offer

Kan.—Pinkerton v. Schwiethale, 208 Kan. 596, 493 P.2d 200 (1972).

2 Alaska—Barber v. National Bank of Alaska, 815 P.2d 857 (Alaska 1991).

3 Mont.—Solberg v. Sunburst Oil & Gas Co., 73 Mont. 94, 235 P. 761 (1925).

Forcible entry and detainer

Award of attorney's fees to successful plaintiff under forcible entry and detainer statute, with no reciprocal right for successful defendant, denies defendant equal protection.

Colo.—More v. Johnson, 193 Colo. 489, 568 P.2d 437 (1977).

4 U.S.—Missouri, K. & T. Ry. Co. of Tex. v. Harris, 234 U.S. 412, 34 S. Ct. 790, 58 L. Ed. 1377 (1914).

Idaho—State ex rel. Kidwell v. U. S. Marketing, Inc., 102 Idaho 451, 631 P.2d 622, 25 A.L.R.4th 381 (1981).

La.—Borne v. Mike Persia Chevrolet Co., Inc., 396 So. 2d 326 (La. Ct. App. 4th Cir. 1981), writ denied, 401 So. 2d 976 (La. 1981).

As to the police power, generally, see §§ 699 to 703.

5 U.S.—Postow v. OBA Federal Sav. and Loan Ass'n, 627 F.2d 1370 (D.C. Cir. 1980).

6 Fla.—J. R. Furlong, Inc. v. Chrysler Corp., 419 So. 2d 385 (Fla. 3d DCA 1982).

7 U.S.—Life & Casualty Insurance Company of Tennessee v. Barefield, 291 U.S. 575, 54 S. Ct. 486, 78 L. Ed. 999 (1934).

Wash.—Gossett v. Farmers Ins. Co. of Washington, 133 Wash. 2d 954, 948 P.2d 1264 (1997).

8 U.S.—Missouri Pac. R. Co. v. Larabee, 234 U.S. 459, 34 S. Ct. 979, 58 L. Ed. 1398 (1914).

9 S.C.—Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998).

10 Colo.—Hartman v. Freedman, 197 Colo. 275, 591 P.2d 1318 (1979).

11 Colo.—Hartman v. Freedman, 197 Colo. 275, 591 P.2d 1318 (1979).

12 Wyo.—Schaefer v. Lampert Lumber Co., 591 P.2d 1225 (Wyo. 1979).

Recovery by subcontractor

Statute permitting subcontractor to collect legal fees when it successfully collects a balance due on a public works project from the prime contractor and surety does not deny equal protection because it grants legal fees only to the successful claimant and not to the prime contractor if the claimant was unsuccessful.
Mass.—Manganaro Drywall, Inc. v. White Const. Co., Inc., 372 Mass. 661, 363 N.E.2d 669 (1977).

13 S.C.—Southeastern Home Bldg. & Refurbishing, Inc. v. Platt, 283 S.C. 602, 325 S.E.2d 328 (1985).

14 Okla.—Thayer v. Phillips Petroleum Co., 1980 OK 95, 613 P.2d 1041 (Okla. 1980).

15 Nev.—Casey v. Williams, 87 Nev. 137, 482 P.2d 824 (1971).

16 5 U.S.C.A. § 504(b)(1)(B).

17 U.S.—Richard v. Hinson, 70 F.3d 415 (5th Cir. 1995).
As to statutes limiting fee awards, see § 1494.

18 Alaska—Shearer v. Mundt, 36 P.3d 1196 (Alaska 2001).

19 Mass.—G.E.B. v. S.R.W., 422 Mass. 158, 661 N.E.2d 646 (1996).

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 3068, 3285, 3366 to 3368, 3635 to 3638, 3640 to 3647, 3649, 3650, 3652 to 3655, 3657, 3658(1) to 3658(8), 3658(10), 3659, 3660

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1. General Principles

§ 1412. Equal participation by all citizens

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3068, 3635, 3637, 3638

Equality in the right to vote is protected by the equal protection guarantee.

The right to vote is protected by equal protection,[1] and the power of the states to determine matters relating to elections must be exercised in a manner consistent with that right.[2] States enjoy broad power to regulate elections and candidacies provided that this power is exercised within the confines of the Equal Protection Clause.[3] The Equal Protection Clause guarantees the opportunity for equal participation by all voters[4] and it applies to the manner of the exercise of the vote[5] as well as to the initial allocation of the franchise.[6]

A provision of a state constitution for the election of a governor by a vote of members of the legislature in the event of a lack of a majority of the electorate does not conflict with the Equal Protection Clause.[7]

Substantial burdens on the right to vote are constitutionally suspect,[8] and are invalid under the Equal Protection Clause, unless they serve a compelling state interest.[9] Constitutional challenges to specific provisions of a state's election laws cannot be

resolved by any litmus-paper test that will separate valid from invalid restrictions; instead, a court must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.[10]

Footnotes

1 U.S.—Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968).

2 U.S.—Bullock v. Carter, 405 U.S. 134, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972).

3 Okla.—Sharp v. Tulsa County Election Bd., 1994 OK 104, 890 P.2d 836, 98 Ed. Law Rep. 424 (Okla. 1994), as supplemented on reh'g, (Jan. 31, 1995).

4 U.S.—Bernbeck v. Gale, 2014 WL 5819930 (D. Neb. 2014).
Utah—Gallivan v. Walker, 2002 UT 89, 54 P.3d 1069 (Utah 2002).
Wash.—Brower v. State, 137 Wash. 2d 44, 969 P.2d 42 (1998).

5 U.S.—Bernbeck v. Gale, 2014 WL 5819930 (D. Neb. 2014).

6 U.S.—Bush v. Gore, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000).
Mont.—Big Spring v. Jore, 2005 MT 64, 326 Mont. 256, 109 P.3d 219 (2005).
As to equal protection in connection with the conduct of an election, see § 1425.
As to equality of voting power and apportionment, see §§ 1428 to 1443.

7 U.S.—Fortson v. Morris, 385 U.S. 231, 87 S. Ct. 446, 17 L. Ed. 2d 330 (1966).

8 U.S.—Riddell v. National Democratic Party, 508 F.2d 770 (5th Cir. 1975).

9 U.S.—Riddell v. National Democratic Party, 508 F.2d 770 (5th Cir. 1975); Little Thunder v. State of S.D., 518 F.2d 1253 (8th Cir. 1975).

10 U.S.—Nader v. Cronin, 620 F.3d 1214 (9th Cir. 2010).
Nev.—Busefink v. State, 286 P.3d 599, 128 Nev. Adv. Op. No. 49 (Nev. 2012).
N.Y.—Walsh v. Katz, 17 N.Y.3d 336, 929 N.Y.S.2d 515, 953 N.E.2d 753 (2011).
Political-structure analysis
Under the political-structure equal protection analysis, the question is whether a state action creates a political structure that treats all individuals as equals but places special burdens on the ability of minority groups to achieve beneficial legislation. Coalition to Defend Affirmative Action v. Brown, 674 F.3d 1128, 279 Ed. Law Rep. 66 (9th Cir. 2012).

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E. Political Rights and Elections

1. General Principles

§ 1413. Level of scrutiny

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3068, 3635, 3637, 3638

The strict scrutiny test is utilized when the fundamental right to vote is involved, but the constitutionality of certain incidental matters, such as qualifications for office, may be determined using a rational basis test.

Where the fundamental right to vote[1] is involved, the strict scrutiny standard,[2] rather than the rational basis test,[3] must be applied.[4] Similarly, content based regulations on political speech challenged on an equal protection basis are valid only if they can survive strict scrutiny.[5] However, not every limitation or incidental burden on voting rights is subject to the strict scrutiny standard of review.[6] In fact, it is erroneous to assume that any law regulating voting must necessarily be subject to strict scrutiny in evaluating constitutionality.[7]

The mere fact that a statute affects the right to vote does not automatically give rise to strict scrutiny in an action challenging a statute's constitutionality under the Equal Protection Clause; instead, courts apply the more flexible standard under which the court weighs the asserted injury to the right to vote against the precise interests put forward by the State as justifications for the burden imposed by its rule.[8] Under that test, a court must examine the character of the classification in question, the importance

of the individual interests at stake, the State's interests asserted in support of the classification,[9] the legitimacy and strength of those interests, and the extent to which they make it necessary to burden the plaintiff's rights.[10] Where the burden is severe, the regulation must be narrowly drawn to advance a state interest of compelling importance,[11] but if it imposes only a reasonable, nondiscriminatory restriction, the State's important regulatory interest will usually justify the restriction.[12] If the restrictions at issue do not have a substantial discriminatory impact upon voting rights, lessened scrutiny is applied.[13]

Strict scrutiny does not apply to laws excluding aliens from political roles within the state[14] although this exception must be narrowly construed.[15] When a special interest election is involved, the classifications of a statute need only bear some rational relationship to a legitimate state end, and a violation of equal protection will be found only if they are based on reasons totally unrelated to that goal.[16] If weighted votes are given proportionately to those benefited by a government action, a voter's equal protection claim will be considered under the rational basis standard instead of the strict scrutiny test required under the one person, one vote rule.[17]

In accordance with the division of opinion whether the right of candidacy is fundamental,[18] it is generally not considered subject to the strict scrutiny test for equal protection purposes[19] although, under an analysis given to a state equal protection guarantee, the right to become a candidate for public office is deemed fundamental, and the test for judicial inquiry is the compelling state interest test.[20]

CUMULATIVE SUPPLEMENT

Cases:

In light of the alternative early voting opportunities that Ohio law provided, Ohio's election statutes, which were facially discriminatory because they extended the deadline for requesting an absentee ballot only for unexpectedly hospitalized prospective voters, placed a moderate burden on arrestees who expected to be confined through upcoming general election, and thus, under the Supreme Court's *Anderson-Burdick* framework for an equal protection claim that a State has burdened voting rights through the disparate treatment of voters, the court would apply intermediate scrutiny by weighing the State's asserted interests against the burden on the arrestees' right to vote. U.S. Const. Amend. 14; Ohio Rev. Code Ann. §§ 3501.32, 3509.02, 3509.03, 3509.051, 3509.08(B). Mays v. LaRose, 951 F.3d 775 (6th Cir. 2020).

Rational basis review, rather than strict scrutiny, applied to equal protection challenge by former residents of Illinois, who were unable to vote in federal elections via Illinois absentee ballots due to their current residence in Puerto Rico, Guam, or United States Virgin Islands, to Illinois election law that did not include subject territories in list of territories that could take advantage of overseas voting procedures, since former residents did not have fundamental right to vote in federal elections, given that subject territories did not send electors to vote for president or vice president and had no voting members in United States Congress, and former residents were not suspect class, absent anything preventing them from moving back to Illinois. U.S. Const. Amend. 14; 10 Ill. Comp. Stat. Ann. 5/20-1(1), 5/20-2.2. Segovia v. United States, 880 F.3d 384 (7th Cir. 2018).

To comply with First Amendment and Equal Protection Clause, severe restrictions on ballot access must be narrowly tailored to advance compelling state interest, but reasonable, nondiscriminatory restrictions are usually justified by state's important regulatory interests in conducting orderly elections. U.S. Const. Amends. 1, 14. Independent Party of Florida v. Secretary, State of Florida, 967 F.3d 1277 (11th Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 § 769.

2 § 1275.

3 § 1279.

4 U.S.—McDonald v. Board of Election Com'rs of Chicago, 394 U.S. 802, 89 S. Ct. 1404, 22 L. Ed. 2d 739 (1969).
Ala.—City of Birmingham v. Community Fire Dist., 336 So. 2d 502 (Ala. 1976).
Ill.—Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283, 65 Ed. Law Rep. 1181 (1990).
Me.—Lambert v. Wentworth, 423 A.2d 527 (Me. 1980).
Minn.—Ulland v. Growe, 262 N.W.2d 412 (Minn. 1978).
Ohio—Desenco, Inc. v. Akron, 84 Ohio St. 3d 535, 1999-Ohio-368, 706 N.E.2d 323 (1999).
Okla.—Clegg v. Oklahoma State Election Bd., 1981 OK 140, 637 P.2d 103 (Okla. 1981).

5 U.S.—Burson v. Freeman, 504 U.S. 191, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992).
As to First Amendment protection of political speech, see § 769.

6 U.S.—Bullock v. Carter, 405 U.S. 134, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972).
Ala.—Blevins v. Chapman, 47 So. 3d 227 (Ala. 2010).
Ariz.—Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Com'n, 211 Ariz. 337, 121 P.3d 843 (Ct. App. Div. 1 2005).
Fla.—Libertarian Party of Florida v. Smith, 687 So. 2d 1292 (Fla. 1996).
Ky.—Mobley v. Armstrong, 978 S.W.2d 307 (Ky. 1998), as modified, (Oct. 22, 1998).
Md.—Suessmann v. Lamone, 383 Md. 697, 862 A.2d 1 (2004).
N.Y.—Walsh v. Katz, 17 N.Y.3d 336, 929 N.Y.S.2d 515, 953 N.E.2d 753 (2011).

7 Wis.—Milwaukee Branch of NAACP v. Walker, 2014 WI 98, 357 Wis. 2d 469, 851 N.W.2d 262 (2014), reconsideration dismissed, 856 N.W.2d 177 (Wis. 2014).

8 U.S.—Day v. Robinwood West Community Improvement Dist., 693 F. Supp. 2d 996 (E.D. Mo. 2010).
Cal.—Rubin v. Padilla, 233 Cal. App. 4th 1128, 183 Cal. Rptr. 3d 373 (1st Dist. 2015).
N.H.—Libertarian Party New Hampshire v. State, 154 N.H. 376, 910 A.2d 1276 (2006).
N.Y.—Walsh v. Katz, 17 N.Y.3d 336, 929 N.Y.S.2d 515, 953 N.E.2d 753 (2011).

9 U.S.—Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979).
Mich.—Socialist Workers Party v. Secretary of State, 412 Mich. 571, 317 N.W.2d 1 (1982).

10 U.S.—Veasey v. Perry, 2014 WL 5090258 (S.D. Tex. 2014).
Pa.—Petition of Berg, 552 Pa. 126, 713 A.2d 1106 (1998).

11 U.S.—Libertarian Party of Virginia v. Judd, 718 F.3d 308 (4th Cir. 2013), cert. denied, 134 S. Ct. 681, 187 L. Ed. 2d 549 (2013).
Cal.—Rubin v. Padilla, 233 Cal. App. 4th 1128, 183 Cal. Rptr. 3d 373 (1st Dist. 2015).

12 D.C.—Orange v. District of Columbia Bd. of Elections and Ethics, 629 A.2d 575 (D.C. 1993).
Idaho—Rudeen v. Cenarrusa, 136 Idaho 560, 38 P.3d 598 (2001).
Ballot access regulation
U.S.—Barr v. Galvin, 626 F.3d 99 (1st Cir. 2010).
Alaska—Green Party of Alaska v. State, Div. of Elections, 147 P.3d 728 (Alaska 2006).

13 Fla.—Libertarian Party of Florida v. Smith, 687 So. 2d 1292 (Fla. 1996).

14 U.S.—Cervantes v. Guerra, 651 F.2d 974 (5th Cir. 1981).
Md.—Broadwater v. State, 306 Md. 597, 510 A.2d 583 (1986).

15 U.S.—Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175 (1984).

16 Kan.—Provance v. Shawnee Mission Unified School Dist. No. 512, 231 Kan. 636, 648 P.2d 710, 5 Ed. Law Rep. 989 (1982).
Water district

The rational basis test is involved where the gravamen of the issue is that a water district is managed by officials elected from a larger region.

U.S.—Collins v. Town of Goshen, 635 F.2d 954 (2d Cir. 1980).

17 Ill.—Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283, 65 Ed. Law Rep. 1181 (1990).

18 § 769.

19 U.S.—Adams v. Askew, 511 F.2d 700 (5th Cir. 1975).

Ky.—Mobley v. Armstrong, 978 S.W.2d 307 (Ky. 1998), as modified, (Oct. 22, 1998).

Md.—Broadwater v. State, 306 Md. 597, 510 A.2d 583 (1986).

Nev.—Nevada Judges Ass'n v. Lau, 112 Nev. 51, 910 P.2d 898 (1996).

Wis.—Wagner v. Milwaukee County Election Com'n, 2003 WI 103, 263 Wis. 2d 709, 666 N.W.2d 816 (2003).

Barriers limiting field of candidates

The mere fact that a state election law creates barriers tending to limit the field of candidates from which voters might choose does not of itself compel close scrutiny.

Ala.—Blevins v. Chapman, 47 So. 3d 227 (Ala. 2010).

N.Y.—Walsh v. Katz, 17 N.Y.3d 336, 929 N.Y.S.2d 515, 953 N.E.2d 753 (2011).

20 W. Va.—State ex rel. Piccirillo v. City of Follansbee, 160 W. Va. 329, 233 S.E.2d 419 (1977).

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§ 1414. Burdens on parties must be narrowly tailored

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3636, 3640 to 3644, 3646

Election law regulations imposing severe burdens on rights of parties, party members, and candidates must be narrowly tailored and advance a compelling state interest; restrictions limiting primaries to party members have generally been upheld on equal protection grounds although a filing fee that makes candidacy dependent on the ability to pay has not.

Election law regulations imposing severe burdens on the rights of parties, party members, and candidates under the First Amendment and equal protection must be narrowly tailored and advance a compelling state interest; lesser burdens, however, trigger a less exacting review.[1] This less exacting review applies because political parties are not an inherently suspect class for purposes of an equal protection analysis and any discrimination against political parties may be justified if it is rationally related to a legitimate state interest.[2] Therefore, to satisfy the equal protection standard, a state law's burden on a political party, an individual voter, or a discrete class of voters must only be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.[3]

It has been held that equal protection is not denied by statutes relating to the filling of vacancies in a legislature by a party primary election open only to party members.[4] Thus, if a primary election is essentially partisan in form and substance,

regulations barring unaffiliated voters from voting in it is consistent with equal protection, even where candidates may seek cross endorsement in each party's primary.[5] Courts have also upheld a requirement that candidates in a primary election pledge to support the party's nominees,[6] and a modification of the power of a party committee to endorse candidates, which does not affect the right to vote.[7] However, in the absence of a reasonable alternative, a requirement of a filing fee to become a candidate in a primary election, utilizing the criterion of ability to pay, is invalid.[8]

Footnotes

1 Cal.—Rubin v. Padilla, 233 Cal. App. 4th 1128, 183 Cal. Rptr. 3d 373 (1st Dist. 2015).

2 U.S.—Greenville County Republican Party Executive Committee v. South Carolina, 824 F. Supp. 2d 655 (D.S.C. 2011).

3 U.S.—Crawford v. Marion County Election Bd., 553 U.S. 181, 128 S. Ct. 1610, 170 L. Ed. 2d 574 (2008).

4 U.S.—Rodriguez v. Popular Democratic Party, 457 U.S. 1, 102 S. Ct. 2194, 72 L. Ed. 2d 628 (1982).

5 Md.—Suessmann v. Lamone, 383 Md. 697, 862 A.2d 1 (2004).

6 U.S.—Ray v. Blair, 343 U.S. 214, 72 S. Ct. 654, 96 L. Ed. 894 (1952).

7 R.I.—Gosz v. Quattrocchi, 448 A.2d 135 (R.I. 1982).

8 U.S.—Bullock v. Carter, 405 U.S. 134, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972).
As to the validity of a statute refusing the refund of fees paid by a minor party candidate, see § 1405.
As to the validity of filing fees imposed on candidates, generally, see § 1424.

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§ 1415. Minor parties and independent candidates

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3636, 3640 to 3644, 3646

A classification resulting in restrictions on access to the ballot for new or minor political parties and independent candidates must be necessary to serve a compelling interest.

A classification resulting in restrictions on ballot access for new political parties and independent candidates must serve a compelling interest.[1] Thus, a regulation having a disparate impact and that, in effect, freezes the political status quo and its two-party system violates the Equal Protection Clause.[2]

Different treatment of minority parties that does not exclude them from the ballot, prevent them from achieving major party status when warranted, or prevent any voter from voting for the candidate of his or her choice, and that is reasonably determined to be necessary to further an important state interest does not deny equal protection.[3] Thus, a requirement that a third-party candidate obtain at least a 3% of the vote in a prior election for the party to be subsequently recognized has been upheld where the amount required was consistent with the practice in other states.[4] Additionally, a full-slate requirement, that a new political party field a candidate for each open position in a political district, was also upheld in one case because in the court's view it imposed a reasonable, nondiscriminatory restriction serving the State's important regulatory interests.[5]

Conversely, a statute making it virtually impossible for a new political party with many members, or an old party, with very few members, to be placed on the ballot violates equal protection, applying the compelling government interest test.[6] A statute requiring that a new political party, in addition to the requirement of a petition, attain a minimum vote in the primary election may also be held to violate equal protection.[7]

Under the compelling interest test, a provision forbidding access to the ballot in the case of an independent candidate who had registered his or her affiliation with a qualified political party at a specified time preceding the primary election does not contravene the Equal Protection Clause.[8] Thus, a state may impose a requirement that an independent candidate not be registered as a member of a political party for 90 days[9] or that a minor party candidate be registered as not affiliated with a political party for a year prior to nomination.[10] However, an interpretation of a statute requiring the removal of the entire slate of candidates of a new political party, when one of them is ineligible for election, violates the Equal Protection Clause.[11]

CUMULATIVE SUPPLEMENT

Cases:

In determining whether a state election law violates equal protection, courts look to see whether the ballot access requirements provide a real and essentially equal opportunity for ballot qualification. U.S. Const. Amend. 14. Arizona Libertarian Party v. Hobbs, 925 F.3d 1085 (9th Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979).
A.L.R. Library
Validity, Construction, and Application of State Requirements for Placement of Independent Candidates for United States Senate on Ballot, 59 A.L.R.6th 111.
Validity, Construction, and Application of State Statutes Governing "Minor Political Parties", 120 A.L.R.5th 1.

2 U.S.—Libertarian Party of North Dakota v. Jaeger, 659 F.3d 687 (8th Cir. 2011).

3 U.S.—Board of Election Com'rs of Chicago v. Libertarian Party of Illinois, 591 F.2d 22 (7th Cir. 1979).

4 U.S.—Green Party of Arkansas v. Daniels, 733 F. Supp. 2d 1055 (E.D. Ark. 2010), judgment aff'd, 649 F.3d 675 (8th Cir. 2011).
Alaska—State, Division of Elections v. Metcalfe, 110 P.3d 976 (Alaska 2005).
As to signature requirements, see § 1416.

5 Ill.—Green Party v. Henrichs, 355 Ill. App. 3d 445, 291 Ill. Dec. 35, 822 N.E.2d 910 (3d Dist. 2005).

6 U.S.—Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968).

7 Mich.—Socialist Workers Party v. Secretary of State, 412 Mich. 571, 317 N.W.2d 1 (1982).

8 U.S.—Storer v. Brown, 415 U.S. 724, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974).

9 Mass.—Metros v. Secretary of Com., 396 Mass. 156, 484 N.E.2d 1015 (1985).

10 Colo.—Colorado Libertarian Party v. Secretary of State of Colo., 817 P.2d 998 (Colo. 1991).

11 Ill.—Anderson v. Schneider, 67 Ill. 2d 165, 8 Ill. Dec. 514, 365 N.E.2d 900 (1977).

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§ 1416. Signature requirements

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3636, 3640 to 3642, 3646

Various petition signature requirements have been upheld as being consistent with equal protection, but others discriminating against minor parties have not.

The courts have upheld, as against contentions of a denial of equal protection, requirements that a petition for the nomination of candidates be signed by a specified percentage of voters except in specified situations,[1] that a candidate for governor obtain a specified number of signatures in at least a specified number of counties,[2] and that each candidate circulate a separate petition rather than have the party circulate a single one.[3] Requirements for signatures of a specified percentage of voters for access to the ballot for statewide offices in the case of unaffiliated nonpartisan or independent candidates,[4] permitting some party candidates to obtain nomination papers with fewer signatures than are required for independent candidates,[5] and that persons signing a petition state an address that matches the voter registration roll,[6] have also been upheld.

On the other hand, legislation requiring separate petitions to form a minor party and to nominate candidates for that party,[7] signatures from voters in more than one county on a nominating petition to place a political party on the ballot,[8] or that

independent candidates and new political parties obtain more signatures on petitions for elections in political subdivisions than for state-wide elections[9] has been found invalid on equal protection grounds. Statutes that define "registered voters" as excluding inactive voters, and prevent their petition signatures from being counted, create a group of second-class citizens and is inconsistent with equal protection.[10]

CUMULATIVE SUPPLEMENT

Cases:

State's requirement that minor political parties obtain 1,000 signatures at convention in order to appear on general election ballot was not more burdensome than ballot access requirements for major parties and their candidates, which were exempt from convention requirement, and, thus, convention requirement did not violate Equal Protection Clause, where history of minor parties successfully meeting convention requirement indicated that requirement imposed only minimal burden. U.S. Const. Amend. 14; Wash. Rev. Code Ann. § 29A.56.610; Wash. Admin. Code 434-215-165. American Delta Party v. Wyman, 488 F. Supp. 3d 1018 (W.D. Wash. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554 (1971).
N.M.—Dillon v. King, 1974-NMSC-096, 87 N.M. 79, 529 P.2d 745 (1974).

2 Pa.—Petition of Berg, 552 Pa. 126, 713 A.2d 1106 (1998).

3 Colo.—National Prohibition Party v. State, 752 P.2d 80 (Colo. 1988).

4 U.S.—American Party of Texas v. White, 415 U.S. 767, 94 S. Ct. 1296, 39 L. Ed. 2d 744 (1974).
Reasonable quantum of voter support
States may impose on minor political parties the precondition of demonstrating the existence of some reasonable quantum of voter support by requiring such parties to file petitions for a place on the ballot signed by a percentage of those who voted in a prior election.
U.S.—Green Party of Arkansas v. Martin, 649 F.3d 675 (8th Cir. 2011).

5 U.S.—Arutunoff v. Oklahoma State Election Bd., 687 F.2d 1375 (10th Cir. 1982).

6 D.C.—Orange v. District of Columbia Bd. of Elections and Ethics, 629 A.2d 575 (D.C. 1993).

7 Md.—Maryland Green Party v. Maryland Bd. of Elections, 377 Md. 127, 832 A.2d 214, 120 A.L.R.5th 663 (2003).

8 U.S.—Communist Party of Illinois v. State Bd. of Elections for State of Ill., 518 F.2d 517 (7th Cir. 1975).

9 U.S.—Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979).
Requirement for more signatures in presidential elections upheld
U.S.—Daien v. Ysursa, 711 F. Supp. 2d 1215 (D. Idaho 2010).

10 Md.—Maryland Green Party v. Maryland Bd. of Elections, 377 Md. 127, 832 A.2d 214, 120 A.L.R.5th 663 (2003).

16B C.J.S. Constitutional Law § 1417

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§ 1417. Campaign finance

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3637, 3638

Campaign finance and disclosure laws have been upheld despite contentions that they discriminate against minor parties or in favor of interest groups or distinguish among entities that may make contributions.

While the constitutionality of campaign finance laws has been primarily considered in connection with the First Amendment,[1] it has also been ruled that the funding system for presidential candidates does not work an invidious discrimination against minor party candidates.[2]

Various distinctions in campaign finance laws among persons or entities entitled to contribute have been upheld, including a limitation on the amount of contributions by individuals and unincorporated associations to a multicandidate political committee, even though corporations and unions were not subject to that limitation,[3] and restrictions on the amounts candidates could receive from political committees, where the total amount one individual could contribute to candidates and committees was also limited.[4]

Equal protection was not denied by contribution disclosure laws applicable to only candidates for certain offices[5] or to contributions in excess of specified amounts.[6] Statutes that require a greater measure of financial disclosure relative to a ballot measure than in the case of an election of a candidate do not violate equal protection.[7]

On the other hand, a classification in a statute that allowed a supporter of a write-in candidate to give her only $200 after the primary, but at same time allowed others to contribute $400 each to Republican and Democratic candidates and allowed those candidates to spend that money in the general election, impinged on the fundamental equal protection right to contribute as a form of political expression since the statute treated contributors differently based on the political affiliation of the candidate being supported.[8]

CUMULATIVE SUPPLEMENT

Cases:

Provisions of Federal Election Campaign Act (FECA) limiting annual contributions by a political action committee (PAC) which was a multicandidate political committee (MPC), to a national, state, or local party committee, did not violate equal protection, though those limits were lower than the limits applicable to PACs that had satisfied the MPC criteria other than the six-month waiting period for higher candidate contribution limits, where the lower limits applicable to MPCs, with respect to contributions to party committees, were more than counteracted under FECA by the increase in limits to amount of contributions that MPCs could make to individual candidates. U.S.C.A. Const.Amend. 5; Federal Election Campaign Act of 1971, § 315(a)(1)(B, D), (a)(2)(A–C), (a)(4), 52 U.S.C.A. § 30116(a)(1)(B, D), (a)(2)(A–C), (a)(4). Stop Reckless Economic Instability Caused by Democrats v. Federal Election Com'n, 814 F.3d 221 (4th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 § 1107.

2 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

3 U.S.—California Med. Ass'n v. Federal Elec. Com'n, 453 U.S. 182, 101 S. Ct. 2712, 69 L. Ed. 2d 567 (1981).

4 Wis.—Gard v. Wisconsin State Elections Bd., 156 Wis. 2d 28, 456 N.W.2d 809 (1990).

5 Ga.—Fortson v. Weeks, 232 Ga. 472, 208 S.E.2d 68 (1974).

6 La.—Guidry v. Roberts, 335 So. 2d 438 (La. 1976).

7 Cal.—Brown v. Superior Court, 5 Cal. 3d 509, 96 Cal. Rptr. 584, 487 P.2d 1224 (1971).

8 U.S.—Riddle v. Hickenlooper, 742 F.3d 922 (10th Cir. 2014).

16B C.J.S. Constitutional Law § 1418

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

E. Political Rights and Elections

3. Qualification of Voters

§ 1418. State's power to qualify voters subject to equal protection

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3367, 3647

The right of all qualified citizens to vote in state and federal elections is protected by equal protection.

The Equal Protection Clause protects the right of all qualified citizens to vote in state and federal elections,[1] and a state's power to determine voter qualifications must be exercised in a manner consistent with equal protection.[2]

States have the power to restrict voter qualifications based on age, residence, and citizenship; all other classifications are suspect and must withstand strict scrutiny[3] and must be necessary to promote a compelling state interest to survive an equal protection challenge.[4] Mere reasonableness will not suffice to sustain the classification.[5]

The grant of the right to vote to some, but not all, voters in an election of special interest must be necessary to promote a compelling state interest.[6] The rule applicable to special interest elections may not be used to justify limiting voting to persons of native ancestry, thus resulting in the exclusion of voters on racial grounds.[7]

The requirement of citizenship as a voting qualification is not a suspect classification for the purpose of equal protection analysis, and the compelling interest test does not apply.[8] Therefore, a state may deny aliens the right to vote consistent with the Equal Protection Clause.[9] In addition, statutes requiring photo identification for in-person voting are generally a minimal, reasonable, and nondiscriminatory restriction warranted by the important regulatory interests of preventing voter fraud.[10] However, where a statute requiring the presentation of photographic identification is not narrowly tailored to meeting the State's compelling interest in preventing impersonation fraud at the polling place, it violates equal protection and the fundamental right to vote.[11]

The elimination from the electorate of a sector of the population because of the way its members may vote is constitutionally impermissible.[12]

A failure of election officials to comply with a statute requiring purging inactive voters from the registration rolls did not itself violate equal protection.[13]

Disenfranchisement of felons.

In view of the section of the Fourteenth Amendment expressly exempting the disenfranchisement of convicted felons from the sanction of reduced congressional representation if voting rights are infringed,[14] state constitutional provisions and statutes disqualifying convicted persons, even after the completion of the sentences, and parolees from registering or voting generally do not violate equal protection.[15] However, a denial of equal protection may result from a completely arbitrary distinction between groups of felons or inmates,[16] such as where a statute, fair on its face, is enforced selectively.[17] Selective disenfranchisement or reenfranchisement of convicted persons is not removed from equal protection considerations but may be upheld under the rational basis analysis.[18] For example, where a reenfranchisement law neither implicated any fundamental right nor targeted any suspect class, the district court properly applied a rational basis review, rather than strict scrutiny, to several convicted felons' equal protection challenge to the law on the basis of their reenfranchisement being conditioned on payment of court-ordered victim restitution and child support obligations; having lost their voting rights upon being convicted of felonies, the plaintiffs lacked any fundamental interest in their right to vote, and wealth-based classifications did not constitute discrimination against any suspect class.[19]

Footnotes

1 U.S.—Rodriguez v. Popular Democratic Party, 457 U.S. 1, 102 S. Ct. 2194, 72 L. Ed. 2d 628 (1982); Kramer v. Union Free School Dist. No. 15, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969).

2 Ill.—Anderson v. Schneider, 67 Ill. 2d 165, 8 Ill. Dec. 514, 365 N.E.2d 900 (1977).
As to a state's power to prescribe voter qualifications, generally, see C.J.S., Elections § 33.

3 U.S.—Carlson v. Wiggins, 675 F.3d 1134 (8th Cir. 2012).
Colo.—Millis v. Board of County Com'rs of Larimer County, 626 P.2d 652 (Colo. 1981).
Del.—Mayor and Council of City of Dover v. Kelley, 327 A.2d 748 (Del. 1974).
Minn.—Erlandson v. Kiffmeyer, 659 N.W.2d 724 (Minn. 2003).
Wash.—City of Seattle v. State, 103 Wash. 2d 663, 694 P.2d 641 (1985).
General and special interest elections
When the elective entity involved performs governmental functions general enough to have a sufficient impact throughout the state, the election is one of general interest, and, in such an election, any classification restricting citizens' right to vote on grounds other than residence, age, and citizenship cannot stand under the Equal Protection Clause unless the State can demonstrate that the classification serves a compelling state interest; on the other hand, if the elective entity has a special limited purpose and a disproportionate effect on a definable group of constituents, the election is a special interest election, and the State need only show the

voting scheme under attack bears a reasonable relationship to its statutory objectives. Carlson v. Wiggins, 675 F.3d 1134 (8th Cir. 2012).

As to the right to vote in primaries, see § 702.

4 Colo.—Millis v. Board of County Com'rs of Larimer County, 626 P.2d 652 (Colo. 1981).

Del.—Mayor and Council of City of Dover v. Kelley, 327 A.2d 748 (Del. 1974).

Wash.—City of Seattle v. State, 103 Wash. 2d 663, 694 P.2d 641 (1985).

5 R.I.—Flynn v. King, 433 A.2d 172 (R.I. 1981).

6 U.S.—Cipriano v. City of Houma, 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed. 2d 647 (1969).

7 U.S.—Rice v. Cayetano, 528 U.S. 495, 120 S. Ct. 1044, 145 L. Ed. 2d 1007 (2000).

8 Colo.—Skafte v. Rorex, 191 Colo. 399, 553 P.2d 830 (1976).

9 U.S.—Cervantes v. Guerra, 651 F.2d 974 (5th Cir. 1981).

Alaska—Park v. State, 528 P.2d 785 (Alaska 1974).

10 U.S.—Crawford v. Marion County Election Bd., 553 U.S. 181, 128 S. Ct. 1610, 170 L. Ed. 2d 574 (2008).

Ga.—Democratic Party of Georgia, Inc. v. Perdue, 288 Ga. 720, 707 S.E.2d 67 (2011).

A.L.R. Library

Constitutionality of Requiring Presentation of Photographic Identification in Order to Vote, 27 A.L.R.6th 541.

11 Mo.—Weinschenk v. State, 203 S.W.3d 201, 27 A.L.R.6th 667 (Mo. 2006).

12 U.S.—Evans v. Cornman, 398 U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970); Cipriano v. City of Houma, 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed. 2d 647 (1969).

13 Md.—State Administrative Bd. of Election Laws v. Board of Sup'rs of Elections of Baltimore City, 342 Md. 586, 679 A.2d 96 (1996).

14 U.S. Const. Amend. XIV, § 2.

15 U.S.—Richardson v. Ramirez, 418 U.S. 24, 94 S. Ct. 2655, 41 L. Ed. 2d 551 (1974).

Mont.—Emery v. State, 177 Mont. 73, 580 P.2d 445 (1978).

N.H.—Fischer v. Governor, 145 N.H. 28, 749 A.2d 321 (2000).

R.I.—Gelch v. State Bd. of Elections, 482 A.2d 1204 (R.I. 1984).

As to the disqualification of convicts from voting, generally, see C.J.S., Elections §§ 46 to 49.

16 Mass.—Cepulonis v. Registrars of Voters of Worcester, 396 Mass. 808, 488 N.E.2d 1166 (1986).

17 U.S.—Williams v. Taylor, 677 F.2d 510 (5th Cir. 1982).

18 U.S.—Shepherd v. Trevino, 575 F.2d 1110 (5th Cir. 1978).

19 U.S.—Johnson v. Bredesen, 624 F.3d 742 (6th Cir. 2010).

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16B C.J.S. Constitutional Law § 1419

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3. Qualification of Voters

§ 1419. Voters' residence as qualification

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3367, 3647

A durational residency requirement for voting must promote a compelling governmental interest to be valid under equal protection.

Durational residency requirements have generally been upheld and may be imposed except in presidential elections.[1] To uphold a durational residency requirement for voting under the Equal Protection Clause, a state must demonstrate that its laws are necessary to promote a compelling governmental interest.[2] Accordingly, a 30-day residency requirement for voters may be valid,[3] unless it does not serve a compelling state interest, in that it is longer than that required to complete the registration process.[4] A requirement that a voter who moves to a new precinct in the same county within the 30-day period initiate the transfer of his or her registration to be entitled to vote a full ballot does not deny equal protection.[5]

Individuals who live on a federal enclave within a state are entitled under the Equal Protection Clause to vote on an equal basis with other state residents.[6]

Using the rational basis test, denying the right to vote to persons residing outside of a political entity but subject to its laws or powers is not a violation of equal protection.[7] For example, allowing only residents that reside in a territory to vote to confirm municipal incorporation, and not other residents of the county, does not violate equal protection.[8] Additionally, equal protection does not prevent a city from using a residency requirement to determine who can vote on the imposition of a flat-rate parcel tax; a city can determine that residents are the most knowledgeable and interested in all aspects of local affairs.[9] On the other hand, strict scrutiny is appropriate when determining whether equal protection is denied when residents of a county who own land in a drainage district cannot vote for an officer in another county who appoints drainage district commissioners as the classification interferes with the fundamental right to vote on equal terms.[10]

A constitutional provision prohibiting a member of the armed services, who did not reside in the state prior to the commencement of military service, from voting in the state, even though the soldier would otherwise be eligible to vote as a resident of the state, denies equal protection.[11]

The failure of the Uniformed and Overseas Citizens Absentee Voting Act[12] to guarantee United States citizens moving to Puerto Rico the right to vote in presidential elections in their former states of residence does not violate their equal protection rights.[13]

An inmate's equal protection rights are not denied by considering his or her voting residence to be the county of residence prior to incarceration.[14]

CUMULATIVE SUPPLEMENT

Cases:

Wisconsin statute increasing from 10 to 28 days the durational residency requirement for a voter to cast a vote in a new district for an office other than President and Vice President was constitutional. 52 U.S.C.A. § 20302(a)(2); Wis. Stat. Ann. §§ 6.10, 6.15(1), 6.18, 6.86(1), 6.86(3). Luft v. Evers, 963 F.3d 665 (7th Cir. 2020).

It was rational for Illinois to treat Northern Mariana Islands and American Samoa as foreign countries for purposes of Illinois election law that barred former Illinois residents currently residing in Puerto Rico, Guam, and United States Virgin Islands from casting absentee ballots in federal elections but allowed former Illinois residents currently residing in American Samoa or Northern Mariana Islands to do so, and, thus, overseas absentee voting law did not violate equal protection rights of former Illinois residents in Puerto Rico, Guam, and United States Virgin Islands, since Northern Mariana Islands was trust territory at time of enactment, rather than fully incorporated territory, and American Samoa was defined under federal law as outlying possession. U.S. Const. Amend. 14; Immigration and Nationality Act §§ 101, 308, 8 U.S.C.A. §§ 1101(a)(29), 1408(1); 10 Ill. Comp. Stat. Ann. 5/20-1(1), 5/20-2.2. Segovia v. United States, 880 F.3d 384 (7th Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 C.J.S., Elections § 37.

2 Colo.—Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972).
D.C.—Williams-Godfrey v. District of Columbia Bd. of Elections and Ethics, 570 A.2d 737 (D.C. 1990).
N.Y.—Atkin v. Onondaga County Bd. of Elections, 30 N.Y.2d 401, 334 N.Y.S.2d 377, 285 N.E.2d 687 (1972).

Wyo.—Delgiorno v. Huisman, 498 P.2d 1246 (Wyo. 1972).

One year in state; three months in county

U.S.—Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

Wash.—Moen v. Erlandson, 80 Wash. 2d 755, 498 P.2d 849 (1972).

3 Cal.—Young v. Gnoss, 7 Cal. 3d 18, 101 Cal. Rptr. 533, 496 P.2d 445 (1972).

4 Me.—Opinion of Justices of Supreme Judicial Court, 303 A.2d 452 (Me. 1973).

5 Ind.—Gallagher v. Indiana State Election Bd., 598 N.E.2d 510 (Ind. 1992).

6 U.S.—Evans v. Cornman, 398 U.S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970).

7 U.S.—Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 99 S. Ct. 383, 58 L. Ed. 2d 292, 26 Fed. R. Serv. 2d 635 (1978).

8 Cal.—Board of Supervisors v. Local Agency Formation Com., 3 Cal. 4th 903, 13 Cal. Rptr. 2d 245, 838 P.2d 1198 (1992).

9 Cal.—Neilson v. City of California City, 133 Cal. App. 4th 1296, 35 Cal. Rptr. 3d 453 (5th Dist. 2005).

10 N.C.—Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

11 U.S.—Carrington v. Rash, 380 U.S. 89, 85 S. Ct. 775, 13 L. Ed. 2d 675 (1965).

12 52 U.S.C.A. § 20302.

13 U.S.—Igartua De La Rosa v. U.S., 32 F.3d 8 (1st Cir. 1994).

14 Utah—Dodge v. Evans, 716 P.2d 270 (Utah 1985).

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16B C.J.S. Constitutional Law § 1420

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3. Qualification of Voters

§ 1420. Property, taxes, or fees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3649, 3650

A requirement for voting in matters of general interest that a voter own property or pay taxes or a fee offends equal protection.

A classification for voting in matters of general interest, based on the ownership of property or the payment of taxes, offends equal protection.[1] The guarantee is also violated by a requirement that makes affluence or the payment of any fee an electoral standard;[2] thus, the requirement of the payment of a poll tax violates the Equal Protection Clause.[3]

Under the rational basis test, the exclusion of out-of-state property owners from voting in local district matters, while granting the franchise to state residents residing outside of the district, is valid.[4] A city may limit the franchise to qualified voters who reside within the boundaries of an area proposed to be annexed, without denying equal protection to persons who own land within that area but did not reside within it.[5]

Footnotes

1 U.S.—Hill v. Stone, 421 U.S. 289, 95 S. Ct. 1637, 44 L. Ed. 2d 172 (1975); City of Phoenix, Ariz. v. Kolodziejski, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523 (1970); Cipriano v. City of Houma, 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed. 2d 647 (1969).

Tex.—Ward County Irrigation Dist. No. 1 v. Red Bluff Water Power Control Dist., 170 S.W.3d 696 (Tex. App. El Paso 2005).

Fire district

R.I.—Flynn v. King, 433 A.2d 172 (R.I. 1981).

2 U.S.—Johnson v. City and County of Philadelphia, 665 F.3d 486 (3d Cir. 2011).

3 U.S.—Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966).

As to poll taxes generally being unconstitutional, see C.J.S., Elections § 16.

4 Colo.—Millis v. Board of County Com'rs of Larimer County, 626 P.2d 652 (Colo. 1981).

5 Ala.—Givorns v. City of Valley, 598 So. 2d 1338 (Ala. 1992).

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16B C.J.S. Constitutional Law § 1421

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E. Political Rights and Elections

4. Qualification of Candidates

§ 1421. Basic qualifications

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3366, 3643 to 3646

Equal protection is implicated by statutes governing the qualifications of candidates for public office.

Statutes governing the qualifications of candidates for public office are subject to equal protection requirements,[1] the inquiry being whether the challenged restriction unfairly and unnecessarily burdens the availability of political opportunity.[2] The protection afforded to persons who desire to run for office requires that state policies, including statutes and employment policies of governmental agencies, that differentiate between those who may become a candidate for elective office and those who may not must bear a rational relationship to a legitimate state purpose.[3]

A state may require, without violating equal protection, that a candidate be a registered voter[4] or meet minimum age requirements.[5] Statutes have also been upheld requiring that a candidate for a judgeship be a lawyer[6] or that a candidate for sheriff possess a high school education.[7]

A constitutional provision prohibiting officeholders from interrupting their current term of office to serve in the legislature rests on a rational predicate as applied to justices of the peace.[8]

A qualification for office that is in excess of those prescribed by a state constitutional provision stating who is entitled to hold office violates the equal protection provision of that state's constitution.[9]

Resignation from office.

A provision of a state constitution that the holders of certain offices automatically resign their positions if they become candidates for other elected offices does not, under the rational basis test, violate equal protection, even though it does not apply to all officeholders.[10] A provision in a judicial code of conduct that a judge must resign to run for any elective office does not violate equal protection, since it rationally seeks to separate a judge's political, legislative, or executive ambitions from the judge's judicial role and to maintain the judiciary's independence.[11]

Ethics legislation.

Ethics laws[12] and requirements that a candidate file a financial interest statement[13] do not deny equal protection. However, a court has invalidated, under the strict scrutiny test, a prohibition against running for office after a violation of a campaign finance disclosure statute that differentiates between candidates on the basis of whether the office can be filled by a special election.[14]

Footnotes

1 Okla.—Sharp v. Tulsa County Election Bd., 1994 OK 104, 890 P.2d 836, 98 Ed. Law Rep. 424 (Okla. 1994), as supplemented on reh'g, (Jan. 31, 1995).
Wash.—Sorenson v. City of Bellingham, 80 Wash. 2d 547, 496 P.2d 512 (1972).
W. Va.—State ex rel. Boley v. Tennant, 228 W. Va. 812, 724 S.E.2d 783 (2012).

2 U.S.—Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982).
As to whether the restriction is subject to strict scrutiny or reasonable basis analysis, see § 1413.

3 Ky.—Cook v. Popplewell, 394 S.W.3d 323 (Ky. 2011).
N.J.—In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly, Fourth Legislative Dist., 427 N.J. Super. 410, 48 A.3d 1164 (Law Div. 2012), judgment aff'd, 210 N.J. 29, 40 A.3d 684 (2012).

4 Md.—Broadwater v. State, 306 Md. 597, 510 A.2d 583 (1986).
For at least six months
Okla.—Hendrix v. State ex rel. Oklahoma State Election Bd., 1976 OK 111, 554 P.2d 770 (Okla. 1976).

5 Minn.—Opatz v. City of St. Cloud, 293 Minn. 379, 196 N.W.2d 298 (1972).

6 U.S.—Bullock v. State of Minn., 611 F.2d 258 (8th Cir. 1979).
Justice of the peace
Nev.—In re Candelaria, 245 P.3d 518, 126 Nev. Adv. Op. No. 40 (Nev. 2010).

7 Okla.—Rogers v. Sontag, 1988 OK 94, 764 P.2d 883 (Okla. 1988).

8 U.S.—Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982).

9 W. Va.—Marra v. Zink, 163 W. Va. 400, 256 S.E.2d 581 (1979).

10 U.S.—Clements v. Fashing, 457 U.S. 957, 102 S. Ct. 2836, 73 L. Ed. 2d 508 (1982).

11 Me.—In re Dunleavy, 2003 ME 124, 838 A.2d 338 (Me. 2003).

12 Ala.—Muncaster v. Alabama State Ethics Commission, 372 So. 2d 853 (Ala. 1979).

13 U.S.—Lawrence v. Board of Election Com'rs of City of Chicago, 524 F. Supp. 2d 1011 (N.D. Ill. 2007).
Mass.—Opinion of the Justices to the Senate, 375 Mass. 795, 376 N.E.2d 810 (1978).

A.L.R. Library

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships, 22 A.L.R.4th 237 § 5.

14 Mo.—Labor's Educational and Political Club-Independent v. Danforth, 561 S.W.2d 339 (Mo. 1977).

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16B C.J.S. Constitutional Law § 1422

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4. Qualification of Candidates

§ 1422. Candidates' residence as qualification

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3366, 3643 to 3646

A durational residency requirement for candidates that has an impact on certain fundamental rights is subject to the strict scrutiny test to determine whether it contravenes equal protection but, if it does not have a major impact on fundamental rights, may be justified on a rational basis that candidates should reside among the citizens they represent.

A durational residency requirement for candidates for public office that has an impact on the political process,[1] the right to travel,[2] or the right to exercise the franchise is subject to the strict scrutiny test.[3] However, where the requirement does not substantially or severely impede fundamental, constitutional rights of potential candidates, voters, or anyone else, strict scrutiny will not be applied and instead would be upheld if it bore a rational relationship to legitimate governmental objective.[4] A 30-day prefiling residence requirement for local office is reasonably necessary and convenient to accommodate the needs of election officials in verifying the residence of candidates, and if this is the case, any durational period requirement for local office in excess of that violates equal protection.[5]

While a requirement that a candidate be a registered voter for a reasonable period has been upheld,[6] it is a violation of equal protection to require that a candidate who was registered to vote in the county for the requisite time also reside in the same precinct for that period.[7]

A minimum residence requirement for candidates may be justified on the basis that it is rational to require that candidates reside among the citizens who they seek to represent[8] if this does not significantly affect a potential candidate's freedom to travel or to associate with others.[9] A statute requiring that a candidate for a public service commission reside in a district for 12 months prior to the election was rationally related to a state's legitimate interests in fostering informed voters and promoting knowledgeable and responsive candidates with ties to the community and thus did not deny equal protection.[10]

Footnotes

1 Cal.—Johnson v. Hamilton, 15 Cal. 3d 461, 125 Cal. Rptr. 129, 541 P.2d 881 (1975).
Limitation of the candidate pool
The New Jersey Constitution's one-year district residency requirement for candidates for state senate and state assembly was subject to strict scrutiny, rather than rational basis, review on a claim that it violated equal protection, where the requirement that a candidate have resided for one year in the legislative district that he or she sought to represent substantially limited the candidate pool during reapportionment years, and, in turn, the fundamental right to vote for the candidate of one's choice.
U.S.—Robertson v. Bartels, 890 F. Supp. 2d 519 (D.N.J. 2012).

2 Cal.—Johnson v. Hamilton, 15 Cal. 3d 461, 125 Cal. Rptr. 129, 541 P.2d 881 (1975).

3 Cal.—Johnson v. Hamilton, 15 Cal. 3d 461, 125 Cal. Rptr. 129, 541 P.2d 881 (1975).
Md.—Board of Sup'rs of Elections of Prince George's County v. Goodsell, 284 Md. 279, 396 A.2d 1033 (1979).
N.J.—In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly, 210 N.J. 29, 40 A.3d 684 (2012).

4 U.S.—Lewis v. Guadagno, 837 F. Supp. 2d 404 (D.N.J. 2011), judgment aff'd, 445 Fed. Appx. 599 (3d Cir. 2011).

5 Cal.—Johnson v. Hamilton, 15 Cal. 3d 461, 125 Cal. Rptr. 129, 541 P.2d 881 (1975).

6 § 1421.

7 Okla.—Mathews v. State Election Bd. of Oklahoma, 1978 OK 113, 582 P.2d 1318 (Okla. 1978).

8 Ohio—State ex rel. Markulin v. Ashtabula Cty. Bd. of Elections, 65 Ohio St. 3d 180, 1992-Ohio-84, 602 N.E.2d 626 (1992).

9 Ohio—State ex rel. Brown v. Summit County Bd. of Elections, 46 Ohio St. 3d 166, 545 N.E.2d 1256 (1989).

10 Ga.—Cox v. Barber, 275 Ga. 415, 568 S.E.2d 478 (2002).
Familiarity between candidates and constituents
State constitution's one-year durational residency requirement for membership in the General Assembly served significant and legitimate state interests and, thus, did not facially violate equal protection; the durational residency requirement ensured that voters had time to develop a familiarity with the candidate, ensured that the candidate could become familiar with the constituency and the issues facing the people to be represented, and operated as a curb on carpetbagging.
N.J.—In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly, 210 N.J. 29, 40 A.3d 684 (2012).

16B C.J.S. Constitutional Law § 1423

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E. Political Rights and Elections

4. Qualification of Candidates

§ 1423. Ownership of property

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3645

The right to be a candidate may not be restricted, consistent with equal protection, to property owners, at least with respect to a government entity exercising power over all residents.

Under the rational basis test, a requirement of the ownership of property for the holding of public office, which constitutes invidious discrimination, is a denial of equal protection.[1] A requirement that a candidate be an owner of property violates the Equal Protection Clause, under the strict scrutiny test, where the governmental entity exercises pervasive powers over all residents within the area regardless of whether they are landowners.[2]

Footnotes

1 U.S.—Turner v. Fouche, 396 U.S. 346, 90 S. Ct. 532, 24 L. Ed. 2d 567 (1970).
N.Y.—Landes v. Town of North Hempstead, 20 N.Y.2d 417, 284 N.Y.S.2d 441, 231 N.E.2d 120 (1967).

2 Cal.—Choudhry v. Free, 17 Cal. 3d 660, 131 Cal. Rptr. 654, 552 P.2d 438 (1976).

End of Document

16B C.J.S. Constitutional Law § 1424

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E. Political Rights and Elections

4. Qualification of Candidates

§ 1424. Filing fees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3646

To satisfy equal protection, there must be an alternative to a filing fee requirement that is onerous on an indigent candidate.

A requirement of a filing fee for access to the ballot is, in the case of an indigent candidate, and in the absence of reasonable alternative means of ballot access, a violation of equal protection.[1] However, a filing fee that most candidates can pay, and if other means of reasonable and alternative access to the ballot are provided, does not, of itself, compel close scrutiny and may be sustained if it can be shown to have some rational basis.[2]

Since a state has a legitimate interest in regulating the number of candidates on the ballot, a modest filing fee requirement, which applies uniformly and equally to all candidates, is upheld under the rational basis test.[3] Similarly, a statute that denied rebates of filing fees to candidates of political parties with less than 5% of the total registered voters was found to be reasonably related to a state's interest in preventing a multiplicity of splinter parties, and, thus, did not violate equal protection, even if that interest could have been better effectuated by petition requirements or other limitations on ballot access.[4] In any event, a uniform filing fee is not invalid where the candidate is merely unwilling to pay it rather than unable to do so.[5]

While a requirement that a candidate pay a fee equal to his or her pro rata share of specified costs, as a condition for having a statement of qualifications included in a voters' pamphlet, denies equal protection,[6] a statute allowing the local agency to bill the candidate for that cost after the pamphlet has been printed and distributed does not violate equal protection so long as the agency does not have the power to make payment of the actual cost of providing the service a prerequisite to a candidate's inclusion in the pamphlet.[7]

Footnotes

1 U.S.—Lubin v. Panish, 415 U.S. 709, 94 S. Ct. 1315, 39 L. Ed. 2d 702 (1974); Bullock v. Carter, 405 U.S. 134, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972).

2 Okla.—Clegg v. Oklahoma State Election Bd., 1981 OK 140, 637 P.2d 103 (Okla. 1981).

3 Okla.—Clegg v. Oklahoma State Election Bd., 1981 OK 140, 637 P.2d 103 (Okla. 1981).

4 Fla.—Libertarian Party of Florida v. Smith, 687 So. 2d 1292 (Fla. 1996).
As to signature requirements, see § 1416.

5 Del.—Cassidy v. Willis, 323 A.2d 598 (Del. 1974), judgment aff'd, 419 U.S. 1042, 95 S. Ct. 613, 42 L. Ed. 2d 636 (1974).

6 Cal.—Knoll v. Davidson, 12 Cal. 3d 335, 116 Cal. Rptr. 97, 525 P.2d 1273 (1974).

7 Cal.—East Bay Municipal Utility Dist. v. Appellate Department, 23 Cal. 3d 839, 153 Cal. Rptr. 597, 591 P.2d 1249 (1979); Knoll v. Davidson, 12 Cal. 3d 335, 116 Cal. Rptr. 97, 525 P.2d 1273 (1974).

16B C.J.S. Constitutional Law § 1425

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5. Conduct of Election

§ 1425. Election procedures subject to equal protection

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3652 to 3655

The regulation of the conduct of elections, including recounts, must conform to the requirements of equal protection.

The power of a state to conduct and regulate elections must be exercised in a manner consistent with the dictates of the Equal Protection Clause.[1] All procedures used by a state as an integral part of the election process must pass muster against the charges of discrimination or of abridgment of the right to vote, which is a fundamental right.[2]

When a state court orders a statewide recount in a presidential election, equal protection requires that there be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied, which requires the adoption of adequate statewide standards for determining what was a legal vote, practicable procedures to implement those standards, and orderly judicial review.[3] The need for finality provides a rational basis for a time limit for requesting a recount.[4]

A provision that gives the two dominant political parties the exclusive right to maintain challengers at the polling booths denies equal protection.[5] However, a statute that limited elections judges to the two major parties did not violate the right of a member

of a minor party equal protection where the statute was rationally related to the legitimate end of efficiently running an election by pairing judges to provide an appearance of propriety to the voters.[6]

Under the rational basis test, a statute that limits the assistance given to illiterate voters at an election to that provided by a specified election official, while blind or disabled persons may receive assistance from any person of their choice, is invalid.[7]

Where the initiative and referendum are available without regard to wealth, a bill allowing an interested party to fund a special election does not violate equal protection by allegedly allowing ballot access to be based upon wealth.[8] A law giving local governmental entities the option to pay an official's expenses in defending a recall does not violate equal protection, even though it made no provision for paying the proponent's expenses, since one legitimate purpose of the recall statutes is to protect elected officials from being subjected to a financial burden based on false or frivolous charges.[9]

Footnotes

1 U.S.—Bush v. Gore, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000); Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968).
Del.—Opinion of the Justices, 295 A.2d 718 (Del. 1972).
Ill.—Anderson v. Schneider, 67 Ill. 2d 165, 8 Ill. Dec. 514, 365 N.E.2d 900 (1977).
Mass.—Bachrach v. Secretary of Com., 382 Mass. 268, 415 N.E.2d 832 (1981).
N.J.—Quaremba v. Allan, 67 N.J. 1, 334 A.2d 321 (1975).

2 U.S.—Angle v. Miller, 673 F.3d 1122 (9th Cir. 2012).

3 U.S.—Bush v. Gore, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000).
Intent of voter
Manual recounts of ballots on which machines had failed to detect a vote for a resident, as implemented in response to a Florida Supreme Court opinion which ordered that "intent of the voter" be discerned, but did not supply specific standards to ensure uniform treatment, did not satisfy the minimum requirement for the nonarbitrary treatment of voters necessary, under the Equal Protection Clause, to secure the fundamental right to vote for President.
U.S.—Bush v. Gore, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000).
A.L.R. Library
Challenges to Punch Card Ballots and Punch Card Voting Systems, 103 A.L.R.5th 417.

4 Wis.—State ex rel. Shroble v. Prusener, 185 Wis. 2d 102, 517 N.W.2d 169 (1994).

5 Mo.—Preisler v. Calcaterra, 362 Mo. 662, 243 S.W.2d 62 (1951).

6 Colo.—MacGuire v. Houston, 717 P.2d 948 (Colo. 1986).

7 Miss.—O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977).

8 Wash.—Brower v. State, 137 Wash. 2d 44, 969 P.2d 42 (1998).

9 Wash.—In re Recall of Pearsall-Stipek, 129 Wash. 2d 399, 918 P.2d 493 (1996).

16B C.J.S. Constitutional Law § 1426

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5. Conduct of Election

§ 1426. Arrangement of ballot

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3654

While determining the makeup of a ballot does not necessarily violate equal protection, some schemes have been successfully challenged as favoring incumbents.

The constitutional guarantee of equal protection as applied to public elections means, in practical effect, that the wording on a ballot or the structure of the ballot cannot favor a particular partisan position.[1] The exercise of authority to limit the size or makeup of the ballot does not, however, per se violate equal protection.[2]

A statute allotting party candidates their own column on the ballot while grouping all independent candidates[3] or minor party and independent candidates[4] together in one column complies with equal protection.

Under the rational basis test, a statute reserving the left-hand column on the ballot for the party that received the most votes in the last congressional election contravenes equal protection as favoring incumbents.[5] A two-tier ballot placement plan, under which established political parties are in the top ballot positions with other parties placed below the established parties, is valid,[6]

but a system under which an election official places his or her own political party in the top position on the ballot with the intention of discriminating against other parties is invalid.[7]

Under the rational basis test, a ballot placement in which the names of party-designated candidates precede those of independent candidates on partisan election ballots is valid,[8] but, under the compelling interest test, where there are alternative methods available, a provision permitting an incumbent in a nonpartisan election to be placed in a top ballot position violates equal protection.[9] A statute requiring that incumbent judges be so designated on the ballot did not violate equal protection by creating an unfair advantage for incumbents, where the statute was justified by legitimate considerations of assuring an able, independent, and stable judiciary, while requiring incumbent judges to submit to an open election.[10]

CUMULATIVE SUPPLEMENT

Cases:

Rational basis test, rather than strict scrutiny, applied to equal protection challenge to provision of Virginia election laws governing general election ballots, which provided that candidates for federal and state elections would be identified with their party affiliations but did not allow candidates for local office to identify their party affiliation on the ballot; statute did not infringe upon a fundamental right, nor did it concern alleged discrimination against a suspect class. U.S. Const. Amend. 14; Va. Code Ann. § 24.2-613. Marcellus v. Virginia State Board of Elections, 168 F. Supp. 3d 865 (E.D. Va. 2016).

[END OF SUPPLEMENT]

Footnotes

1 Cal.—McDonough v. Superior Court, 204 Cal. App. 4th 1169, 139 Cal. Rptr. 3d 572 (6th Dist. 2012).
2 Cal.—Libertarian Party v. Eu, 83 Cal. App. 3d 470, 147 Cal. Rptr. 888 (2d Dist. 1978).
3 U.S.—McLain v. Meier, 637 F.2d 1159 (8th Cir. 1980).
4 U.S.—Ihlenfeldt v. State Election Bd., 425 F. Supp. 1361 (E.D. Wis. 1977).
5 U.S.—McLain v. Meier, 637 F.2d 1159 (8th Cir. 1980).
6 U.S.—Board of Election Com'rs of Chicago v. Libertarian Party of Illinois, 591 F.2d 22 (7th Cir. 1979).
7 U.S.—Sangmeister v. Woodard, 565 F.2d 460 (7th Cir. 1977).
8 Minn.—Ulland v. Growe, 262 N.W.2d 412 (Minn. 1978).
9 Cal.—Gould v. Grubb, 14 Cal. 3d 661, 122 Cal. Rptr. 377, 536 P.2d 1337 (1975).
10 Minn.—Peterson v. Stafford, 490 N.W.2d 418 (Minn. 1992).

16B C.J.S. Constitutional Law § 1427

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5. Conduct of Election

§ 1427. Absentee ballots

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3655

Courts have examined whether various restrictions on the right to an absentee ballot violate equal protection.

It does not contravene the Equal Protection Clause to refuse to furnish absentee ballots to persons who are held, before trial, in jails in counties of their residence and who are neither charged with nonbailable offenses or who are unable to raise the necessary bail.[1] However, a distinction, with regard to the right to an absentee ballot, between persons detained awaiting trial or pursuant to misdemeanor convictions in the county of their residence and those detained outside of it violates equal protection.[2]

A method of delivery of absentee ballots that does not deny equal protection will be sustained, even though a different method is prescribed for delivering ballots to patients than to other persons.[3]

A state's practice to print only the names of the major established parties on an absentee ballot, thereby permitting absentee voting by some classes of voters and denying the privilege to others, without affording a comparable alternative means to vote, is a denial of equal protection.[4] A statutory prohibition against mailing supplemental ballots to voters to whom regular absentee

ballots were previously sent, if the death or catastrophic illness of a candidate before the general election caused a vacancy on the ballot, violated the equal protection rights of absentee voters who could not obtain a replacement ballot in person.[5]

CUMULATIVE SUPPLEMENT

Cases:

Equal Protection Clause is not offended simply because some groups find voting more convenient than do plaintiffs because of state's mail-in ballot rules, even where voting in person may be extremely difficult, if not practically impossible, because of circumstances beyond state's control. U.S. Const. Amend. 14. Texas Democratic Party v. Abbott, 961 F.3d 389 (5th Cir. 2020).

Any burden on right to vote caused by California's Voter's Choice Act (VCA), which permitted voters in some counties to receive a ballot by mail automatically, while requiring voters in other counties to register to receive a ballot by mail, was not severe enough to trigger equal protection strict scrutiny; VCA made it easier for some people to vote and did not allocate representation differently among voters. U.S. Const. Amend. 14; Cal. Elec. Code § 4005(a)(8)(A). Short v. Brown, 893 F.3d 671 (9th Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—McDonald v. Board of Election Com'rs of Chicago, 394 U.S. 802, 89 S. Ct. 1404, 22 L. Ed. 2d 739 (1969).

2 U.S.—O'Brien v. Skinner, 414 U.S. 524, 94 S. Ct. 740, 38 L. Ed. 2d 702 (1974).
As to the validity of absentee ballot laws, generally, see C.J.S., Elections § 347.

3 Iowa—Luse v. Wray, 254 N.W.2d 324 (Iowa 1977).

4 U.S.—American Party of Texas v. White, 415 U.S. 767, 94 S. Ct. 1296, 39 L. Ed. 2d 744 (1974).

5 Minn.—Erlandson v. Kiffmeyer, 659 N.W.2d 724 (Minn. 2003).

16B C.J.S. Constitutional Law § 1428

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6. Equality of Voting Power

a. General Principles

§ 1428. One person, one vote

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3657

The "one person, one vote" system is a requirement under the Fourteenth Amendment.

The "one person, one vote" system is the doctrine of equal representation, a constitutional requirement under the Fourteenth Amendment.[1] It requires that each person's vote count the same as any other person's[2] and that representative government is one of equal representation for equal numbers of people.[3] In other words, the right to vote is protected by the U.S. Constitution against dilution or debasement.[4] Also, upon having granted the right to vote on equal terms, a state may not value one person's vote over that of another by later arbitrary and disparate treatment during a recount.[5]

Whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause requires that each qualified voter be given an equal opportunity to participate in that election.[6] An individual's right to vote for state legislators is unconstitutionally impaired where the weight of the vote is, in a substantial fashion, diluted when compared with votes of citizens living in other parts of the state,[7] the idea that one group can be granted

greater voting strength than another being hostile to the basis of representative government.[8] The principle of "one person, one vote" may not be watered down, even by a majority vote of the electorate,[9] and arguments that explain the debasement of a citizen's constitutional right to an equal vote based on the exigencies of history or convenience are not persuasive.[10]

The principle of "one person, one vote" is not an absolute;[11] it requires only such equality as is practicable,[12] and does not create rights and privileges beyond the warranty of mathematical equivalency of votes, and does not assure local autonomy or a particular allocation of political power.[13] The principle is not triggered simply because a limited class of those otherwise qualified to vote may vote, such as where a special-purpose unit of government performs functions affecting definable groups of constituents more than others.[14]

CUMULATIVE SUPPLEMENT

Cases:

It must become the heritage of our Nation to rise above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons, and this imperative to purge racial prejudice from the administration of justice was given new force and direction by the ratification of the Civil War Amendments. U.S.C.A. Const.Amends. 13–15. Pena-Rodriguez v. Colorado, 137 S. Ct. 855 (2017).

By ensuring that each representative is subject to the requests and suggestions from the same number of constituents, total-population apportionment promotes equitable and effective representation, consistent with the one person, one vote principle of the Equal Protection Clause. U.S.C.A. Const.Amend. 14. Evenwel v. Abbott, 136 S. Ct. 1120 (2016).

Once geographical unit for which representative is to be chosen is designated, all who participate in election are to have equal vote, no matter where their home may be in that geographical unit. Public Integrity Alliance, Inc. v. City of Tucson, 805 F.3d 876 (9th Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Alaska—Kenai Peninsula Borough v. State, 743 P.2d 1352 (Alaska 1987).
Iowa—Meyer v. Campbell, 260 Iowa 1346, 152 N.W.2d 617 (1967).
Kan.—In re Stovall, 273 Kan. 715, 44 P.3d 1266 (2002).
S.C.—Burriss v. Anderson County Bd. of Educ., 369 S.C. 443, 633 S.E.2d 482, 211 Ed. Law Rep. 1047 (2006).
Heavy burden to justify departure from principle
N.Y.—Esler v. Walters, 56 N.Y.2d 306, 452 N.Y.S.2d 333, 437 N.E.2d 1090 (1982).

2 U.S.—Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo., 397 U.S. 50, 90 S. Ct. 791, 25 L. Ed. 2d 45 (1970); Day v. Robinwood West Community Improvement Dist., 693 F. Supp. 2d 996 (E.D. Mo. 2010).
Ill.—Eastern v. Canty, 75 Ill. 2d 566, 27 Ill. Dec. 752, 389 N.E.2d 1160 (1979).
Iowa—Polk County Bd. of Sup'rs v. Polk Commonwealth Charter Com'n, 522 N.W.2d 783 (Iowa 1994).
Kan.—In re Stovall, 273 Kan. 715, 44 P.3d 1266 (2002).
One person, one vote rule applies to local government districts
U.S.—Wright v. North Carolina, 975 F. Supp. 2d 539 (E.D. N.C. 2014).

Pa.—In re Municipal Reapportionment of Tp. of Haverford, 873 A.2d 821 (Pa. Commw. Ct. 2005).
N.J.—Borough of Rocky Hill v. State, 420 N.J. Super. 365, 21 A.3d 657, 268 Ed. Law Rep. 911 (Ch. Div. 2010).

3 U.S.—Dean v. Leake, 550 F. Supp. 2d 594 (E.D. N.C. 2008).

4 U.S.—Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo., 397 U.S. 50, 90 S. Ct. 791, 25 L. Ed. 2d 45 (1970).
Vt.—Putter v. Montpelier Public School System, 166 Vt. 463, 697 A.2d 354, 120 Ed. Law Rep. 203 (1997).
Vote dilution as nefarious as outright prohibition on voting
S.C.—Burriss v. Anderson County Bd. of Educ., 369 S.C. 443, 633 S.E.2d 482, 211 Ed. Law Rep. 1047 (2006).

5 U.S.—Bush v. Gore, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000).
As to recounts violating equal protection, see § 1425.

6 Ga.—Ramsbottom Co. v. Bass/Zebulon Roads Neighborhood Ass'n, 273 Ga. 798, 546 S.E.2d 778 (2001).
Vt.—City of St. Albans v. Northwest Regional Planning Com'n, 167 Vt. 466, 708 A.2d 194 (1998).

7 U.S.—Gordon v. Lance, 403 U.S. 1, 91 S. Ct. 1889, 29 L. Ed. 2d 273 (1971); Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964); Gray v. Sanders, 372 U.S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963).
Fla.—In re Senate Joint Resolution 2G, Special Apportionment Session 1992, 597 So. 2d 276 (Fla. 1992), amended on other grounds, 601 So. 2d 543 (Fla. 1992).

8 U.S.—Moore v. Ogilvie, 394 U.S. 814, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1969).
Principle essential
Equal protection, as expressed in the "one person, one vote" principle, is an essential element of the representative process.
Neb.—Pick v. Nelson, 247 Neb. 487, 528 N.W.2d 309 (1995).

9 U.S.—Lucas v. Forty-Fourth General Assembly of State of Colo., 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

10 U.S.—Board of Estimate of City of New York v. Morris, 489 U.S. 688, 109 S. Ct. 1433, 103 L. Ed. 2d 717 (1989).

11 U.S.—Ripon Soc., Inc. v. National Republican Party, 525 F.2d 567 (D.C. Cir. 1975).
Precision unnecessary
One-person, one-vote requirement of the Equal Protection Clause of the Fourteenth Amendment does not require that legislative districts have precisely equal population but provides that divergences must be based on legitimate considerations incident to the effectuation of a rational state policy.
U.S.—Harris v. Arizona Independent Redistricting Com'n, 993 F. Supp. 2d 1042 (D. Ariz. 2014), U.S. S.Ct. appeal filed, 83 U.S.L.W. 3118 (U.S. Aug. 25, 2014).

12 Cal.—Girth v. Thompson, 11 Cal. App. 3d 325, 89 Cal. Rptr. 823 (4th Dist. 1970).

13 U.S.—Mrazek v. Suffolk County Bd. of Elections, 630 F.2d 890 (2d Cir. 1980).
Cal.—Stirling v. Board of Supervisors, 48 Cal. App. 3d 184, 121 Cal. Rptr. 435 (2d Dist. 1975).
Town veto
Statute allowing a town board to veto a county zoning ordinance amendment does not violate the one-person, one-vote requirement, even though the inhabitants of the county are affected by the decision of the town board members, who are elected by town residents, since the direct and immediate effect of the ordinance is on the town's residents, and it is reasonable that their votes, through their representatives, weigh more heavily than those of other county inhabitants.
Wis.—Quinn v. Town of Dodgeville, 122 Wis. 2d 570, 364 N.W.2d 149 (1985)
Vote on gambling
Voters' complaints that voting power with regard to their ability to approve riverboat gambling in their county was diluted in comparison to that of residents of another county, where voting was to be in each city where a casino was to be located, rather than county-wide, was not sufficient under the Equal Protection Clause, as the statute provided equal participation for persons within each political subdivision affected.
Ind.—Indiana Gaming Com'n v. Moseley, 643 N.E.2d 296 (Ind. 1994).

14 Cal.—Southern Cal. Rapid Transit Dist. v. Bolen, 1 Cal. 4th 654, 3 Cal. Rptr. 2d 843, 822 P.2d 875 (1992).

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16B C.J.S. Constitutional Law § 1429

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

E. Political Rights and Elections

6. Equality of Voting Power

a. General Principles

§ 1429. Application to political parties and primaries

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3660

While it is questionable whether the "one person, one vote" principle applies to internal affairs of political parties or conventions, it does apply to primary elections.

While it has been said that political parties are not required to apply the "one person, one vote" principle to votes taken in the course of their internal affairs,[1] the principle applies in primaries as well as general elections,[2] and a departure from a strict adherence to the principle in political party nominating procedures must be justified by a compelling state interest executed within a constitutionally rational design.[3] Equal protection prohibits a racially motivated exclusion of eligible voters from primaries, the weighting of primary votes in favor of sparsely populated counties,[4] and a requirement of geographical support in petitions by independent candidates for placement on the ballot.[5]

It appears that the Equal Protection Clause does not require the representation in presidential nominating conventions of some defined constituency on a "one person, one vote" basis;[6] it is satisfied if the representational scheme and each of its elements

rationally advance some legitimate interest of the party in winning elections or otherwise achieving its political goals.[7] It is not essential that a political party allocate convention delegates to the states in proportion to the number of party voters voting in the respective states in one or more preceding presidential elections.[8]

Footnotes

1 U.S.—Seergy v. Kings County Republican County Committee, 459 F.2d 308 (2d Cir. 1972).

2 U.S.—Exon v. Tiemann, 279 F. Supp. 609 (D. Neb. 1968); Fahey v. Darigan, 405 F. Supp. 1386 (D.R.I. 1975).
Ark.—Whitley v. Cranford, 354 Ark. 253, 119 S.W.3d 28 (2003).
Wash.—Story v. Anderson, 93 Wash. 2d 546, 611 P.2d 764 (1980).
Presidential primary
U.S.—Irish v. Democratic-Farmer-Labor Party of Minn., 287 F. Supp. 794 (D. Minn. 1968), judgment aff'd, 399 F.2d 119 (8th Cir. 1968).

3 U.S.—Barthelmes v. Morris, 342 F. Supp. 153 (D. Md. 1972).

4 U.S.—Bode v. National Democratic Party, 452 F.2d 1302 (D.C. Cir. 1971).

5 U.S.—Moore v. Ogilvie, 394 U.S. 814, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1969).

6 U.S.—Ripon Soc., Inc. v. National Republican Party, 525 F.2d 567 (D.C. Cir. 1975); State of Ga. v. National Democratic Party, 447 F.2d 1271 (D.C. Cir. 1971).

7 U.S.—Ripon Soc., Inc. v. National Republican Party, 525 F.2d 567 (D.C. Cir. 1975).

8 U.S.—Bode v. National Democratic Party, 452 F.2d 1302 (D.C. Cir. 1971).

16B C.J.S. Constitutional Law § 1430

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

E. Political Rights and Elections

6. Equality of Voting Power

a. General Principles

§ 1430. Elements and proof of vote dilution

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3657

Purposeful and discriminatory intent is required to sustain a claim of vote dilution in violation of the Equal Protection Clause.

For purposes of equal protection analysis, "vote dilution" occurs when the voting power of one group is purposely and invidiously reduced as compared to the voting power of others in the political subdivision affected by the election.[1] A determination of discriminatory intent is a requisite to a finding of unconstitutional vote dilution.[2]

Discriminatory purpose, as required for a vote dilution claim under the Equal Protection Clause, may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another.[3] Where a minority can demonstrate a lack of access to the process of slating candidates, the unresponsiveness of legislators to their particularized interests, a tenuous state policy underlying a preference for multimember or at-large districting, or that the existence of past discrimination precludes effective participation in the election system, a strong case of dilution of voting

strength is made.[4] The fact of dilution is established upon proof of the existence of an aggregate of these factors, but all these factors need not be proved in order to obtain relief.[5]

Footnotes

1 Ind.—Indiana Gaming Com'n v. Moseley, 643 N.E.2d 296 (Ind. 1994).
Identifiable group required
A vote-dilution claim under the Fourteenth Amendment is viable only if the claimants can prove the plan is the result of intentional discrimination against an identifiable group.
Idaho—Bonneville County v. Ysursa, 142 Idaho 464, 129 P.3d 1213 (2005).

2 U.S.—Rogers v. Lodge, 458 U.S. 613, 102 S. Ct. 3272, 73 L. Ed. 2d 1012 (1982).

3 U.S.—Backus v. South Carolina, 857 F. Supp. 2d 553 (D.S.C. 2012), judgment aff'd, 133 S. Ct. 156, 184 L. Ed. 2d 1 (2012).

4 U.S.—McGill v. Gadsden County Commission, 535 F.2d 277 (5th Cir. 1976).
As to the constitutionality of at-large or multimember districts, generally, see § 1440.

5 U.S.—McGill v. Gadsden County Commission, 535 F.2d 277 (5th Cir. 1976).

16B C.J.S. Constitutional Law § 1431

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

E. Political Rights and Elections

6. Equality of Voting Power

b. Apportionment

§ 1431. Equal representation required

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3658(1) to 3658(3), 3658(8)

Legislative apportionment must comply with equal protection standards.

Legislative apportionment and reapportionment must comply with equal protection standards[1] to assure that each citizen has an equally effective voice in the election of members of state legislatures and local offices.[2] An apportionment of a state legislature that does not meet these standards is not constitutionally permissible.[3] Equal protection principles also constrain a state legislature when drawing congressional districts.[4]

The constitutional test of fair apportionment under the Equal Protection Clause is whether there is an invidious discrimination.[5] The equal protection clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races,[6] in both houses of a bicameral legislature.[7]

Inherent in the concept of fair representation are two propositions: first, that in apportionment schemes, one person's vote should equal another's vote as nearly as practicable;[8] and second, that assuming substantial equality, the scheme must not operate to minimize or cancel out the voting strength of a political interest group or racial elements of the voting population.[9] Although the question is generally analyzed in the context of racial groups, the Fourteenth Amendment also protects voting rights with respect to political and economic groups.[10] If a basis of apportionment or reapportionment is adopted that does not reasonably assure adequate protection of the integrity of the individual's vote, the "one person, one vote" concept is violated.[11]

State legislative districting schemes that give the same number of representatives to unequal numbers of constituents have the effect of dilution and undervaluation of the votes of those living in the overweighted districts, thus resulting in discrimination against those living in disfavored areas.[12] However complicated or sophisticated an apportionment scheme might be, it may not, consistent with the Equal Protection Clause of the Fourteenth Amendment, result in a significant undervaluation of the weight of the votes of certain of a state's citizens merely because of where they happen to reside.[13]

It is the distribution of legislators rather than the method of distributing them that must satisfy the demands of the Equal Protection Clause.[14] Thus, while a method of proportional representation, under which some more populous districts are allotted several representatives, will not necessarily result in a constitutional apportionment, it must be shown that the effect of applying this method was to deny any person equal protection of the laws by creating representative districts substantially unequal in size.[15]

An individual's constitutionally protected right to cast an equally weighted vote may not be denied even by a vote of a majority of a state's electorate if the apportionment scheme adopted by the voters fails to conform to the requirements of the Equal Protection Clause.[16]

Effect of state constitutional provisions.

With respect to the operation of the Equal Protection Clause, it makes no difference whether a state's legislative apportionment scheme is embodied in its constitution or in statutory provisions,[17] and a state constitutional requirement must yield to the federal constitutional requirement of "one person, one vote."[18]

An equal protection clause of a state constitution may impose a stricter standard than its federal counterpart in the sense that it also prohibits intentional discrimination against voters in a geographic area.[19]

CUMULATIVE SUPPLEMENT

Cases:

The Equal Protection Clause prohibits intentional "vote dilution" — invidiously minimizing or canceling out the voting potential of racial or ethnic minorities. U.S.C.A. Const.Amend. 14. Abbott v. Perez, 138 S. Ct. 2305 (2018).

The Fourteenth Amendment's Equal Protection Clause requires States to make an honest and good faith effort to construct legislative districts as nearly of equal population as is practicable, but the Constitution does not demand mathematical perfection. U.S.C.A. Const.Amend. 14. Harris v. Arizona Independent Redistricting Com'n, 136 S. Ct. 1301 (2016).

Under the one person, one vote principle of the Equal Protection Clause, states have an interest in taking reasonable, nondiscriminatory steps to facilitate access for all its residents to their elected representatives. U.S.C.A. Const.Amend. 14. Evenwel v. Abbott, 136 S. Ct. 1120 (2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968).
Kan.—In re Senate Bill No. 220, 225 Kan. 628, 593 P.2d 1 (1979).
Vt.—In re Senate Bill 177, 132 Vt. 282, 318 A.2d 157 (1974).

2 N.J.—Borough of Rocky Hill v. State, 420 N.J. Super. 365, 21 A.3d 657, 268 Ed. Law Rep. 911 (Ch. Div. 2010).

3 U.S.—Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

4 U.S.—Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995).

5 U.S.—Dusch v. Davis, 387 U.S. 112, 87 S. Ct. 1554, 18 L. Ed. 2d 656 (1967).
Minor deviations from mathematical equality not invidious discrimination
U.S.—Kostick v. Nago, 960 F. Supp. 2d 1074 (D. Haw. 2013), judgment aff'd, 134 S. Ct. 1001, 187 L. Ed. 2d 849 (2014).

6 U.S.—Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).
N.H.—In re Below, 151 N.H. 135, 855 A.2d 459 (2004).

7 U.S.—Mahan v. Howell, 410 U.S. 315, 93 S. Ct. 979, 35 L. Ed. 2d 320 (1973), opinion modified on other grounds, 411 U.S. 922, 93 S. Ct. 1475, 36 L. Ed. 2d 316 (1973); Lucas v. Forty-Fourth General Assembly of State of Colo., 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964); Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).
Md.—Matter of Legislative Districting of State, 299 Md. 658, 475 A.2d 428 (1984).

8 U.S.—South Carolina State Conference of Branches of Nat. Ass'n for Advancement of Colored People, Inc. v. Riley, 533 F. Supp. 1178 (D.S.C. 1982), aff'd, 459 U.S. 1025, 103 S. Ct. 433, 74 L. Ed. 2d 594 (1982).
Kan.—In re Senate Bill No. 220, 225 Kan. 628, 593 P.2d 1 (1979).
As to substantial equality, see § 1436.
Merely starting point
Equal apportionment is merely the starting point of any consideration whether the "one man, one vote" principle has been violated.
Nev.—Clark County v. City of Las Vegas, 92 Nev. 323, 550 P.2d 779 (1976).

9 U.S.—Wyche v. Madison Parish Police Jury, 635 F.2d 1151 (5th Cir. 1981).
Nev.—Clark County v. City of Las Vegas, 92 Nev. 323, 550 P.2d 779 (1976).
Wash.—Eugster v. State, 171 Wash. 2d 839, 259 P.3d 146 (2011).

10 Haw.—Kawamoto v. Okata, 75 Haw. 463, 868 P.2d 1183 (1994).

11 Nev.—Clark County v. City of Las Vegas, 92 Nev. 323, 550 P.2d 779 (1976).

12 U.S.—Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).
Mo.—Armentrout v. Schooler, 409 S.W.2d 138 (Mo. 1966).

13 U.S.—WMCA, Inc. v. Lomenzo, 377 U.S. 633, 84 S. Ct. 1418, 12 L. Ed. 2d 568 (1964); Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).
Iowa—Mandicino v. Kelly, 158 N.W.2d 754 (Iowa 1968).

14 U.S.—Burns v. Richardson, 384 U.S. 73, 86 S. Ct. 1286, 16 L. Ed. 2d 376 (1966).

15 U.S.—Burns v. Richardson, 384 U.S. 73, 86 S. Ct. 1286, 16 L. Ed. 2d 376 (1966).
As to the constitutionality of multimember districts, see § 1440.

16 U.S.—Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968); Lucas v. Forty-Fourth General Assembly of State of Colo., 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).
Iowa—Meyer v. Campbell, 260 Iowa 1346, 152 N.W.2d 617 (1967).

17 U.S.—Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187, 92 S. Ct. 1477, 32 L. Ed. 2d 1 (1972); Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

18 U.S.—Sudekum v. Hayes, 414 F.2d 41 (6th Cir. 1969).
Or.—Hartung v. Bradbury, 332 Or. 570, 33 P.3d 972 (2001).
Tenn.—Moore v. State, 436 S.W.3d 775 (Tenn. Ct. App. 2014), appeal denied, (May 15, 2014).
Vt.—In re Senate Bill 177, 130 Vt. 358, 294 A.2d 653 (1972), opinion supplemented on other grounds, 130 Vt. 365, 294 A.2d 657 (1972).

19 Alaska—Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992), as modified on reh'g, (Mar. 12, 1993).

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6. Equality of Voting Power

b. Apportionment

§ 1432. Reapportionment of districts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3658(1) to 3658(3)

Periodic reapportionment is necessary to preserve "one person, one vote."

Equal protection does not mean that states may not adopt some reasonable plan for periodic revision of their apportionment schemes.[1] Practical difficulties in reapportioning may not justify perpetuating an unconstitutional apportionment,[2] and once an apportionment scheme is found to be constitutionally invalid, it should not be permitted to continue beyond a period reasonably necessary to make the required correction.[3]

The basic purpose of the constitutional standards for reapportionment is to assure equal protection of the rights to participate in a state's political process and to vote,[4] to the extent reapportionment can accomplish this.[5] To pass constitutional muster, any legislative reapportionment must comply with principles of "one person, one vote."[6] A decennial reapportionment is a minimal requirement[7] and is a rational or reasonable approach.[8]

Effect on current officers or voters.

Compliance with the "one person, one vote" principle does not require a state to cast validly elected officials out of office prior to the expiration of their terms, so as to give residents of the revised district the opportunity to elect someone else immediately after reapportionment.[9] Thus, candidates and voters are not denied their constitutional right to equal protection by a redistricting statute that had the effect of postponing an election in their district for two years.[10] A temporary disenfranchisement from the combined effect of reapportionment, staggered terms, and term limitations does not violate the equal protection rights of voters despite the loss of the opportunity to prolong a legislator's incumbency.[11]

CUMULATIVE SUPPLEMENT

Cases:

City's inclusion of population of state prison within one of city's six wards, based on U.S. Census total-population data, when redistricting the city's wards, as opposed to using population of eligible voters, did not violate equal protection under one-person, one-vote principle, in absence of any evidence of invidious discrimination against racial or political groups or that maximum population deviation was 10% or more. U.S. Const. Amend 14. Davidson v. City of Cranston, Rhode Island, 837 F.3d 135 (1st Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

2 Cal.—Silver v. Reagan, 67 Cal. 2d 452, 62 Cal. Rptr. 424, 432 P.2d 26 (1967), supplemented, 67 Cal. 2d 924, 64 Cal. Rptr. 325, 434 P.2d 621 (1967).

3 Haw.—Chikasuye v. Lota, 50 Haw. 511, 50 Haw. 589, 444 P.2d 904 (1968).

4 Colo.—In re Reapportionment of Colorado General Assembly, 45 P.3d 1237 (Colo. 2002).

5 Kan.—Petition of Stephan, 251 Kan. 597, 836 P.2d 574 (1992).

6 U.S.—Kostick v. Nago, 878 F. Supp. 2d 1124 (D. Haw. 2012).

7 U.S.—Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

8 Cal.—Silver v. Reagan, 67 Cal. 2d 452, 62 Cal. Rptr. 424, 432 P.2d 26 (1967), supplemented, 67 Cal. 2d 924, 64 Cal. Rptr. 325, 434 P.2d 621 (1967).
Nev.—Clark County v. City of Las Vegas, 92 Nev. 323, 550 P.2d 779 (1976).

9 Del.—Twilley v. Stabler, 290 A.2d 636 (Del. 1972).

10 Neb.—Pick v. Nelson, 247 Neb. 487, 528 N.W.2d 309 (1995).

11 Ark.—Moore v. McCuen, 317 Ark. 105, 876 S.W.2d 237 (1994).

16B C.J.S. Constitutional Law § 1433

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

E. Political Rights and Elections

6. Equality of Voting Power

b. Apportionment

§ 1433. Reapportionment of districts—Test of validity

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3285, 3658(1) to 3658(5)

A reapportionment plan may not result in invidious discrimination with regard to the strength of each person's vote.

When determining whether a reapportionment plan is valid under the Equal Protection Clause, the first inquiry must be into the plan's rationality.[1] A court must determine whether there is a difference in the relevant interests of the groups created and whether any resulting enhancement of minority voting strength amounts to invidious discrimination in violation of the Equal Protection Clause.[2] The judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the state's citizens, which constitutes an impermissible impairment of their constitutionally protected right to vote.[3] Unconstitutional discrimination in reapportionment occurs only when an electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole.[4] A redistricting plan violates equal protection only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively, in the sense that the will of the majority is continually frustrated, or the minority is effectively denied a fair chance to influence the political process.[5] A threshold showing of discriminatory vote dilution is required for a

prima facie case, and the mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm.[6] The dilution of voting strength claim requires proof that the redistricting plan has an intentionally discriminatory effect, and it is not enough to show that those allegedly discriminated against did not obtain legislative representation in proportion to their numbers.[7]

After a prima facie case of discrimination has been shown, the question is whether the legislature's plan may reasonably be said to advance a rational state policy, and, if so, whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits.[8] A justification for a deviation in a legislative redistricting plan is not sufficient under the Equal Protection Clause if it is based upon a policy that has not been applied consistently.[9]

Racial discrimination.

An allegation that particular redistricting legislation is so extremely irregular on its face that it can rationally be viewed only as an effort to segregate the races for the purposes of voting, without regard for traditional districting principles and without a sufficiently compelling justification, is sufficient to state a claim under the Equal Protection Clause.[10]

While the permissible use of racial criteria is not confined to eliminating the effects of past discriminatory apportionment,[11] a redistricting plan in which race is the predominant overriding factor violates equal protection.[12] Strict scrutiny applies to an equal protection challenge to a redistricting plan, when race is predominant consideration, and a state must demonstrate that its legislation is narrowly tailored to achieve a compelling interest.[13] Where a governmental interest justifying the use of a racial classification in legislative redistricting is the eradication of the effects of past discrimination, the action must be narrowly tailored and justified although it does not necessarily have to achieve this goal fully.[14] Even assuming that the avoidance of liability under the Voting Rights Act[15] may be a compelling state interest justifying the use of a racial classification in legislative redistricting, the legislative action must remedy the anticipated violation or achieve compliance, to be narrowly tailored and permissible under the Equal Protection Clause.[16]

CUMULATIVE SUPPLEMENT

Cases:

Finding of three-judge District Court that race was predominant factor motivating state legislature's decision to place a significant number of African-American voters within a particular district, for congressional redistricting, was not clearly erroneous, and thus, strict scrutiny for equal protection violation was required; State's mapmakers purposefully established a racial target that African-Americans should make up no less than a majority of district's voting-age population so as to comply with VRA's prohibition of vote dilution, and the announced racial target subordinated other districting criteria and produced boundaries amplifying divisions between blacks and whites. U.S.C.A. Const.Amend. 14; 28 U.S.C.A. §§ 1253, 2284(a); Voting Rights Act of 1965, § 2(a), 52 U.S.C.A. § 10301(a). Cooper v. Harris, 137 S. Ct. 1455 (2017).

When race furnishes the overriding reason for choosing one map over others during legislative redistricting, a further showing of inconsistency between the enacted plan and traditional redistricting criteria is unnecessary to a finding of racial predominance, so that strict scrutiny for an equal protection violation is required. U.S.C.A. Const.Amend. 14. Cooper v. Harris, 137 S. Ct. 1455 (2017).

When a State justifies the predominant use of race in redistricting on the basis of the need to comply with the preclearance provision of the Voting Rights Act (VRA), the narrow tailoring requirement for surviving an equal protection challenge under strict scrutiny insists only that the legislature have a strong basis in evidence in support of the race-based choice that it has

made; that standard does not require the State to show that its action was actually necessary to avoid a statutory violation, so that, but for its use of race, the State would have lost in court. U.S.C.A. Const.Amend. 14; Voting Rights Act of 1965, § 5(b), 52 U.S.C.A. § 10304(b). Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788 (2017).

State had strong basis in evidence for believing that use of 55 percent of black voting-age population (BVAP), as target for redistricting of an ability-to-elect majority-minority electoral district, was necessary to comply with preclearance provision of Voting Rights Act (VRA) by avoiding retrogression, so that State satisfied narrow-tailoring requirement for surviving strict scrutiny for equal protection violation; leader of redistricting effort for Virginia House of Delegates carefully assessed local conditions and structures, and the result reflected a good-faith effort of the leader and his colleagues to achieve an informed bipartisan consensus. U.S.C.A. Const.Amend. 14; Voting Rights Act of 1965, § 5(b), 52 U.S.C.A. § 10304(b). Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788 (2017).

[END OF SUPPLEMENT]

Footnotes

1 Cal.—Legislature v. Reinecke, 10 Cal. 3d 396, 110 Cal. Rptr. 718, 516 P.2d 6 (1973).

2 U.S.—Town of Lockport, New York v. Citizens for Community Action at Local Level, Inc., 430 U.S. 259, 97 S. Ct. 1047, 51 L. Ed. 2d 313 (1977).

3 U.S.—Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

4 U.S.—Davis v. Bandemer, 478 U.S. 109, 106 S. Ct. 2797, 92 L. Ed. 2d 85 (1986).

5 Colo.—Beauprez v. Avalos, 42 P.3d 642 (Colo. 2002).

Discrimination against political party

Any improper motivation in discriminating against the Republican party in redistricting did not violate equal protection, absent additional proof that Republicans had been consistently and substantially excluded from political process or denied political effectiveness over a period of more than one election.

Alaska—Kenai Peninsula Borough v. State, 743 P.2d 1352 (Alaska 1987).

6 U.S.—Davis v. Bandemer, 478 U.S. 109, 106 S. Ct. 2797, 92 L. Ed. 2d 85 (1986).

Consolidating military voters

Redistricting board did not violate the equal protection rights of military personnel by creating a house district including them since neither military personnel nor members of any other group have any constitutional right to be divided among two or more districts to maximize their opportunity to influence multiple districts rather than control one.

Alaska—In re 2001 Redistricting Cases, 44 P.3d 141 (Alaska 2002).

7 Md.—Matter of Legislative Districting of State, 299 Md. 658, 475 A.2d 428 (1984).

8 Idaho—Smith v. Idaho Com'n on Redistricting, 136 Idaho 542, 38 P.3d 121 (2001).

9 Idaho—Bingham County v. Idaho Com'n for Reapportionment, 137 Idaho 870, 55 P.3d 863 (2002).

10 U.S.—Bush v. Vera, 517 U.S. 952, 116 S. Ct. 1941, 135 L. Ed. 2d 248 (1996); Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995); Shaw v. Reno, 509 U.S. 630, 113 S. Ct. 2816, 125 L. Ed. 2d 511 (1993).

As to the effect of gerrymandering, see § 1435.

11 U.S.—United Jewish Organizations of Williamsburgh, Inc. v. Carey, 430 U.S. 144, 97 S. Ct. 996, 51 L. Ed. 2d 229 (1977).

12 U.S.—Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995).

13 U.S.—Shaw v. Hunt, 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996).

14 U.S.—Shaw v. Hunt, 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996).

15 42 U.S.C.A. § 1973.

16 U.S.—Shaw v. Hunt, 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996).

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16B C.J.S. Constitutional Law § 1434

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§ 1434. Deference to legislature

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3658(1) to 3658(3)

Districting matters are best left to the legislature if it acts within equal protection requirements.

Districting and apportionment are matters best left to legislative determination, and when a state accepts that responsibility, its decisions as to the most effective reconciling of traditional apportionment policies should not be restricted beyond the commands of the Equal Protection Clause.[1] For instance, the number of a state's legislative districts or of members in each house of its legislature does not raise an issue of equal protection unless the prescribed number occasions significant and invalidating population deviations.[2] A state may also decide what house districts should be combined to form a state senate district, without violating any group's equal protection rights, in an effort to comply with the Voting Rights Act.[3]

Ordinarily, a plan of legislative reapportionment enacted by a local governing body, which meets the mathematical requirements of the "one person, one vote" formula, is presumed to be valid, and the challenging party has a heavy burden of proving that the

plan is impermissible for any reason.[4] Unless it can be established that a plan is intended to discriminate invidiously against a particular minority or minorities, no federal constitutional question will arise.[5]

Footnotes

1 U.S.—Wise v. Lipscomb, 434 U.S. 1329, 98 S. Ct. 15, 54 L. Ed. 2d 41 (1977).

2 U.S.—Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187, 92 S. Ct. 1477, 32 L. Ed. 2d 1 (1972).

3 Alaska—In re 2001 Redistricting Cases, 44 P.3d 141 (Alaska 2002).

4 U.S.—Troxler v. St. John the Baptist Parish Police Jury, 331 F. Supp. 222 (E.D. La. 1971).
Court required to presume constitutionality
Ariz.—Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Com'n, 211 Ariz. 337, 121 P.3d 843 (Ct. App. Div. 1 2005).

5 U.S.—Sutton v. Dunne, 529 F. Supp. 312 (N.D. Ill. 1981), judgment aff'd, 681 F.2d 484 (7th Cir. 1982).

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b. Apportionment

§ 1435. Gerrymandering of districts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3285, 3658(5)

While partisan gerrymandering per se is not subject to constitutional attack under the Fourteenth Amendment, racial gerrymandering is suspect, and the bizarre shape of a district is circumstantial evidence of such gerrymandering.

Partisan gerrymandering per se is not subject to constitutional attack under the Fourteenth Amendment[1] and is not subject to strict scrutiny.[2] For example, the fact that district boundaries may be drawn in a way that minimizes the number of contests between present incumbents does not, in and of itself, establish invidiousness.[3] However, district lines must not be drawn in such a way as to dilute the voting strength of a particular racial or political element of the voting population.[4] A racially gerrymandered districting scheme is constitutionally suspect regardless of whether the reason for the racial classification is benign or the purpose is remedial; however, the constitutional wrong occurs when race becomes the dominant factor.[5]

One claiming the existence of unconstitutional racial gerrymandering bears the burden of proving a race-based motive and may do so either through circumstantial evidence of the district's shape and demographics or through more direct evidence going to

the legislative purpose.[6] The bizarre shape of a voting district is not a threshold requirement of a claim that a state has used race as a basis for separating voters into districts but may be persuasive circumstantial evidence that race, and not other districting principles, was a legislature's controlling rationale when drawing district lines.[7] Districts that look like a bug splattered on a windshield, a Rorschach ink-blot test, a jigsaw puzzle, or a sacred Mayan Bird, or are so irregular in shape on their face that they can be understood only as an effort to separate voters into different districts on the basis of race are evidence of presumptively unconstitutional racial gerrymandering.[8]

A state's decision to create a congressional district where members of a minority group are a majority is not itself objectionable; rather, direct evidence of that decision is merely one of several essential ingredients to require the application of strict scrutiny.[9] However, a state's interest in avoiding the expense and unpleasantness of litigation under the Voting Rights Act[10] does not constitute a compelling interest justifying a racial gerrymander; a state must also have a strong factual basis for believing that it is violating the Act.[11]

A reapportionment plan may implicate both the Equal Protection Clause and an antigerrymandering provision of a state constitution.[12]

CUMULATIVE SUPPLEMENT

Cases:

The Equal Protection Clause prohibits a State, without sufficient justification, from separating its citizens into different voting districts on the basis of race. U.S.C.A. Const.Amend. 14. Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788 (2017).

The harms that flow from racial sorting in drawing boundaries for electoral districts, for purposes of a racial gerrymandering claim under the Equal Protection Clause, include being personally subjected to a racial classification as well as being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group. U.S.C.A. Const.Amend. 14. Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788 (2017).

To satisfy the burden of showing that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district, in an action alleging racial gerrymandering in violation of the Equal Protection Clause, the plaintiff must prove that the legislature subordinated traditional race-neutral districting principles to racial considerations. U.S.C.A. Const.Amend. 14. Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788 (2017).

The shape of an electoral district is relevant to a racial gerrymandering claim under the Equal Protection Clause not because bizarreness of shape is a necessary element of the constitutional wrong or a threshold requirement of proof, but because it may be persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale; parties therefore may rely on evidence other than bizarreness to establish race-based districting, and may show the predominance of race as a motivating factor either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose. U.S.C.A. Const.Amend. 14. Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788 (2017).

A court faced with a racial gerrymandering claim under the Equal Protection Clause must consider all of the lines of the electoral district at issue, and any explanation for a particular portion of the lines must take account of the districtwide context; concentrating on particular portions in isolation may obscure the significance of relevant districtwide evidence, such as stark splits in the racial composition of populations moved into and out of disparate parts of the district, or the use of an express racial target, and a holistic analysis is necessary to give that kind of evidence its proper weight. U.S.C.A. Const.Amend. 14. Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788 (2017).

A conflict or inconsistency between the enacted plan for electoral redistricting and traditional redistricting criteria is not a threshold requirement or a mandatory precondition in order for a challenger to establish a claim of racial gerrymandering in violation of the Equal Protection Clause; while a conflict or inconsistency may be persuasive circumstantial evidence tending to show racial predomination, there is no rule requiring challengers to present this kind of evidence in every case. U.S.C.A. Const.Amend. 14. Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788 (2017).

Malapportionment claims are justiciable under the Equal Protection Clause. U.S.C.A. Const.Amend. 14. Evenwel v. Abbott, 136 S. Ct. 1120 (2016).

Redistricting plans are unconstitutional under Equal Protection Clause if conceived or operated as purposeful devices to further racial discrimination by minimizing, canceling out, or diluting voting strength of racial elements in voting population. U.S. Const. Amend. 14. Anne Harding v. County of Dallas, Texas, 948 F.3d 302 (5th Cir. 2020).

Voters seeking preliminary injunction barring state from enforcing existing redistricting plan and requiring state to implement new map in advance of upcoming midterm elections failed to show they would likely prevail on threshold question as to whether political gerrymandering claims were justiciable, in voters' action challenging Maryland's redistricting law as unconstitutional political gerrymander, alleging that voting districts were strategically moved, based on citizens' voting records and known party affiliations, for purpose of diluting political party's votes and preventing voters from electing their preferred representatives. Benisek v. Lamone, 266 F. Supp. 3d 799 (D. Md. 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Davis v. Bandemer, 478 U.S. 109, 106 S. Ct. 2797, 92 L. Ed. 2d 85 (1986); Gaffney v. Cummings, 412 U.S. 735, 93 S. Ct. 2321, 37 L. Ed. 2d 298 (1973).
W. Va.—State ex rel. Cooper v. Tennant, 229 W. Va. 585, 730 S.E.2d 368 (2012).
As to what constitutes gerrymandering, and whether it is permissible, generally, see C.J.S., Elections § 85.

2 U.S.—Bush v. Vera, 517 U.S. 952, 116 S. Ct. 1941, 135 L. Ed. 2d 248 (1996).

3 U.S.—Burns v. Richardson, 384 U.S. 73, 86 S. Ct. 1286, 16 L. Ed. 2d 376 (1966).
Md.—Matter of Legislative Districting of State, 299 Md. 658, 475 A.2d 428 (1984).

4 Kan.—Petition of House Bill No. 2620, 225 Kan. 827, 595 P.2d 334 (1979).
Wash.—Story v. Anderson, 93 Wash. 2d 546, 611 P.2d 764 (1980).
Affirmative intent
Drawing of district lines with the affirmative intent to disadvantage a minority interest would deny equal protection.
N.J.—Jackman v. Bodine, 55 N.J. 371, 262 A.2d 389 (1970).
Proof of political discrimination
(1) A political gerrymandering claim may succeed only if there is proof of discrimination against an identifiable political group and an actual discriminatory effect on that group.
Md.—Ajamian v. Montgomery County, 99 Md. App. 665, 639 A.2d 157 (1994).
(2) A claim of partisan political gerrymandering in violation of the federal Equal Protection Clause was not proven without showing that the legislative redistricting plan would lead to a disproportionately low representation of Republicans in the House of Representatives as a whole.
Mass.—McClure v. Secretary of Com., 436 Mass. 614, 766 N.E.2d 847 (2002).
A.L.R. Library
Diluting effect of minorities' votes by adoption of particular election plan, or gerrymandering of election district, as violation of equal protection clause of Federal Constitution, 27 A.L.R. Fed. 29.

5 U.S.—Shaw v. Hunt, 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996).
As to redistricting along racial lines, generally, see § 1432.
A.L.R. Library
Equal Protection and Due Process Clause Challenges Based on Racial Discrimination—Supreme Court Cases, 172 A.L.R. Fed. 1 §§ 6, 9.

6 U.S.—Shaw v. Hunt, 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996).

7 U.S.—Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995).
Ala.—Collins v. Bennett, 684 So. 2d 681, 115 Ed. Law Rep. 190 (Ala. 1995).

8 U.S.—Bone Shirt v. Hazeltine, 387 F. Supp. 2d 1035 (D.S.D. 2005), aff'd, 461 F.3d 1011, 40 A.L.R. Fed. 2d 613 (8th Cir. 2006).

9 U.S.—Bush v. Vera, 517 U.S. 952, 116 S. Ct. 1941, 135 L. Ed. 2d 248 (1996).
Ariz.—Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Com'n, 220 Ariz. 587, 208 P.3d 676 (2009).

10 42 U.S.C.A. § 1973.

11 U.S.—Shaw v. Hunt, 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996).

12 Alaska—Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992), as modified on reh'g, (Mar. 12, 1993).
A.L.R. Library
Application of Constitutional "Compactness Requirement" to Redistricting, 114 A.L.R.5th 311.

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16B C.J.S. Constitutional Law § 1436

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6. Equality of Voting Power

b. Apportionment

§ 1436. Population equality

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3658(4)

Electoral apportionment must be based on the general principle of population equality.

Electoral apportionment must be based on the general principle of population equality, and this principle applies to state and local elections.[1] The Equal Protection Clause requires that legislative districts be of nearly equal population so that each person's vote may be given equal weight in the election of representatives.[2] The relevant inquiry is whether the vote of any citizen is approximately equal in weight to that of any other citizen, the aim being to provide fair and effective representation for all citizens.[3] Statutes that provide for the selection of legislators upon the basis of unequal apportionment of the population in the respective legislative districts may be declared unconstitutional as in violation of the Equal Protection Clause[4] even if this was done in deference to area, economic, or other group interests.[5] Single representative districts that contain varying populations are unconstitutional per se because they deny residents equal protection, and the overriding objective of apportionment must be substantial equality of population among the various districts.[6] Apportionment structures should not contain a built-in bias, which tends to favor particular geographic areas or political interests, or which necessarily will tend to favor less populous

districts over their more highly populated neighbors, although the mere absence of a built-in bias is not a justification for a departure from population equality.[7]

A state must make an honest and good-faith effort to construct its legislative districts as nearly of equal population as is practicable.[8]

CUMULATIVE SUPPLEMENT

Cases:

Under the one person, one vote principle of the Equal Protection Clause, states must design both congressional and state legislative districts with equal populations, and must regularly reapportion districts to prevent malapportionment. U.S.C.A. Const.Amend. 14. Evenwel v. Abbott, 136 S. Ct. 1120 (2016).

Senate district requirement for placing initiative on ballot by obtaining signatures of voters in 26 senate districts and removal provision for voter to change mind by submitting to county clerk a statement requesting removal did not violate equal protection clause under one-person, one-vote principle; since senate districts had roughly equal populations, rural and urban voters were treated the same, and neither group wielded disproportionate power. U.S. Const. Amend. 14; Utah Code Ann. §§ 20A-7-201(2)(a), 20A-7-205(3)(a). Count My Vote, Inc. v. Cox, 2019 UT 60, 452 P.3d 1109 (Utah 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Abate v. Mundt, 403 U.S. 182, 91 S. Ct. 1904, 29 L. Ed. 2d 399 (1971).
As to local elections, see § 1443.
A.L.R. Library
Inequalities in Population of Election Districts or Voting Units, Other Than Districts or Units for Election to Congress or State or Territorial Offices, as Rendering Apportionment Violative of Federal Constitution—Post-Baker Cases, 143 A.L.R. Fed. 631.

2 U.S.—Connor v. Finch, 431 U.S. 407, 97 S. Ct. 1828, 52 L. Ed. 2d 465 (1977); Town of Lockport, New York v. Citizens for Community Action at Local Level, Inc., 430 U.S. 259, 97 S. Ct. 1047, 51 L. Ed. 2d 313 (1977).

3 U.S.—Board of Estimate of City of New York v. Morris, 489 U.S. 688, 109 S. Ct. 1433, 103 L. Ed. 2d 717 (1989).
N.H.—City of Manchester v. Secretary of State, 163 N.H. 689, 48 A.3d 864 (2012).

4 U.S.—Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

5 U.S.—Swann v. Adams, 385 U.S. 440, 87 S. Ct. 569, 17 L. Ed. 2d 501 (1967).

6 Ark.—Riley v. Baxter County Election Com'n, 311 Ark. 273, 843 S.W.2d 831 (1992).
As to multimember districts, see § 1440.

7 U.S.—Abate v. Mundt, 403 U.S. 182, 91 S. Ct. 1904, 29 L. Ed. 2d 399 (1971).

8 U.S.—Brown v. Thomson, 462 U.S. 835, 103 S. Ct. 2690, 77 L. Ed. 2d 214 (1983); Connor v. Finch, 431 U.S. 407, 97 S. Ct. 1828, 52 L. Ed. 2d 465 (1977).
Alaska—In re 2001 Redistricting Cases, 47 P.3d 1089 (Alaska 2002).
Fla.—In re Constitutionality of House Joint Resolution 1987, 817 So. 2d 819 (Fla. 2002).
Haw.—Kawamoto v. Okata, 75 Haw. 463, 868 P.2d 1183 (1994).
Idaho—Smith v. Idaho Com'n on Redistricting, 136 Idaho 542, 38 P.3d 121 (2001).

Me.—In re 2003 Legislative Apportionment of House of Representatives, 2003 ME 81, 827 A.2d 810, 114 A.L.R.5th 747 (Me. 2003).

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

E. Political Rights and Elections

6. Equality of Voting Power

b. Apportionment

§ 1437. Population equality—Deviations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3658(6)

Any deviation from the ideal of "one person, one vote" must be justified by a state as fostering the effectuation of a legitimate state policy.

The Constitution permits only limited population variances that are unavoidable despite a good-faith effort to achieve absolute equality or for which justification is shown.[1] Any deviation from the ideal of "one person, one vote" must be justified by a state as fostering the effectuation of a legitimate state policy.[2] The population deviation of a voting district, as determined in an analysis of whether a district complies with equal protection, is the percentage by which a district's population is above or below the ideal population; the ideal population is determined by dividing the total population by the total number of districts in the state.[3]

Since absolute equality is a mathematical impossibility, mathematical exactness or precision is not a constitutional requirement,[4] and reapportionment plans should not be invalidated under the Equal Protection Clause when only minor population variations among districts are proved.[5] Some consideration must be given to the character and degree of deviations,[6] and more flexibility

is constitutionally permissible with respect to state legislative reapportionment than in congressional redistricting.[7] So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, which is nondiscriminatory and which the state has consistently sought to honor,[8] some deviations from the equal population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.[9] Furthermore, while the U.S. Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by that body,[10] slightly greater percentage deviations may be tolerable for local government apportionment schemes;[11] indeed, rather substantial variations may be tolerable constitutionally if satisfactorily justified.[12]

While no amount of population variance is per se de minimis,[13] minor deviations from mathematical equality are insufficient to make out a prima facie case of invidious discrimination.[14] The proper judicial approach is to ascertain whether there has been a faithful adherence to a plan of population-based representation, with only such minor deviations as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination.[15] The court must consider the entire plan.[16] While there is no fixed percentage deviation, and the allowance of a variation in one state has little bearing on the validity of a similar variation in another state's plan,[17] some state courts, based on a Supreme Court case in which a 9.9% population variation in state legislative districts was upheld,[18] have stated that a deviation less than 10% is constitutionally valid,[19] and that any legislative redistricting plan that contains a population deviation above 10% is prima facie discriminatory, shifting the burden to its proponents to justify the variances.[20] In any event, the ultimate inquiry is whether the legislature's plan may reasonably be said to advance a rational state policy and, if so, whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits.[21] A plan with large deviations may not be justified by state policies if there is an alternative plan with much smaller population deviations that serves the same policies.[22]

CUMULATIVE SUPPLEMENT

Cases:

The Equal Protection Clause permits deviation from equal population of legislative districts when it is justified by legitimate considerations incident to the effectuation of a rational state policy. U.S.C.A. Const.Amend. 14. Harris v. Arizona Independent Redistricting Com'n, 136 S. Ct. 1301 (2016).

To make out a prima facie case of invidious discrimination under the Fourteenth Amendment's Equal Protection Clause, those attacking a state-approved plan for reapportionment of legislative districts must show that it is more probable than not that a deviation of less than ten percent reflects the predominance of illegitimate reapportionment factors rather than legitimate considerations. U.S.C.A. Const.Amend. 14. Harris v. Arizona Independent Redistricting Com'n, 136 S. Ct. 1301 (2016).

Given the inherent difficulty of measuring and comparing factors that, under the Equal Protection Clause, may legitimately account for small deviations from strict mathematical equality of the population of legislative districts, attacks on deviations of less than ten percent will succeed only rarely, in unusual cases. U.S.C.A. Const.Amend. 14. Harris v. Arizona Independent Redistricting Com'n, 136 S. Ct. 1301 (2016).

Under the one person, one vote principle of the Equal Protection Clause, states must draw congressional districts with populations as close to perfect equality as possible. U.S.C.A. Const.Amend. 14. Evenwel v. Abbott, 136 S. Ct. 1120 (2016).

"Maximum population deviation," i.e., the sum of the percentage deviations from perfect population equality of the most- and least-populated districts, of more than 10% represents presumptively impermissible apportionment under the one person, one vote principle of the Equal Protection Clause. U.S.C.A. Const.Amend. 14. Evenwel v. Abbott, 136 S. Ct. 1120 (2016).

Single member district apportionment plan for board of directors for Edwards Aquifer Authority (EAA), a special purpose district, by subregional water interests, rather than by population, was carefully balanced to reflect different water interests in subregions that were disproportionately impacted by aquifer, and thus plan was rationally related to statutory objectives of Edwards Aquifer Authority Act, and therefore plan did not violate one person, one vote requirement of the Equal Protection Clause; population-based representation would have defeated purpose of EAA and destroyed the careful balance of interests upon which EAA was formed, and apportionment plan was not limited to permit holders or landowners with wells as all residents within EAA's jurisdictional boundaries were allowed to vote. U.S. Const. Amend. 14. League of United Latin American Citizens v. Edwards Aquifer Authority, 313 F. Supp. 3d 735 (W.D. Tex. 2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Mahan v. Howell, 410 U.S. 315, 93 S. Ct. 979, 35 L. Ed. 2d 320 (1973), opinion modified on other grounds, 411 U.S. 922, 93 S. Ct. 1475, 36 L. Ed. 2d 316 (1973).

2 U.S.—Abate v. Mundt, 403 U.S. 182, 91 S. Ct. 1904, 29 L. Ed. 2d 399 (1971); Swann v. Adams, 385 U.S. 440, 87 S. Ct. 569, 17 L. Ed. 2d 501 (1967).

3 N.M.—Maestas v. Hall, 2012-NMSC-006, 274 P.3d 66 (N.M. 2012).

4 U.S.—Abate v. Mundt, 403 U.S. 182, 91 S. Ct. 1904, 29 L. Ed. 2d 399 (1971); Swann v. Adams, 385 U.S. 440, 87 S. Ct. 569, 17 L. Ed. 2d 501 (1967); Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

State constitution

There was no support for the proposition that the "according to population" language in a state constitution required strict numerical equivalency.

Or.—Hartung v. Bradbury, 332 Or. 570, 33 P.3d 972 (2001).

5 U.S.—Gaffney v. Cummings, 412 U.S. 735, 93 S. Ct. 2321, 37 L. Ed. 2d 298 (1973).

6 U.S.—Brown v. Thomson, 462 U.S. 835, 103 S. Ct. 2690, 77 L. Ed. 2d 214 (1983).

7 U.S.—Mahan v. Howell, 410 U.S. 315, 93 S. Ct. 979, 35 L. Ed. 2d 320 (1973), opinion modified on other grounds, 411 U.S. 922, 93 S. Ct. 1475, 36 L. Ed. 2d 316 (1973).

8 Mass.—Town of Brookline v. Secretary of Com., 417 Mass. 406, 631 N.E.2d 968 (1994).

9 U.S.—Mahan v. Howell, 410 U.S. 315, 93 S. Ct. 979, 35 L. Ed. 2d 320 (1973), opinion modified on other grounds, 411 U.S. 922, 93 S. Ct. 1475, 36 L. Ed. 2d 316 (1973).

Preserving boundaries and minimizing shifts

Legislative apportionment plan with a maximum deviation for state senate of 15.81 percentage points and a maximum of 16.13 percentage points for house did not violate the Equal Protection Clause where the objective of preserving county and municipal boundaries and minimizing shifts of municipalities and voters justified the moderate disparity in district size.

Mich.—In re Apportionment of State Legislature-1992, 439 Mich. 715, 486 N.W.2d 639 (1992).

10 U.S.—Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo., 397 U.S. 50, 90 S. Ct. 791, 25 L. Ed. 2d 45 (1970); Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968).

11 U.S.—Abate v. Mundt, 403 U.S. 182, 91 S. Ct. 1904, 29 L. Ed. 2d 399 (1971).

12 Cal.—Silver v. Reagan, 67 Cal. 2d 452, 62 Cal. Rptr. 424, 432 P.2d 26 (1967), supplemented, 67 Cal. 2d 924, 64 Cal. Rptr. 325, 434 P.2d 621 (1967).

Kan.—Petition of House Bill No. 2620, 225 Kan. 827, 595 P.2d 334 (1979).

13 U.S.—Brown v. Thomson, 462 U.S. 835, 103 S. Ct. 2690, 77 L. Ed. 2d 214 (1983).

14 U.S.—Gaffney v. Cummings, 412 U.S. 735, 93 S. Ct. 2321, 37 L. Ed. 2d 298 (1973).

15 U.S.—Swann v. Adams, 385 U.S. 440, 87 S. Ct. 569, 17 L. Ed. 2d 501 (1967); Roman v. Sincock, 377 U.S. 695, 84 S. Ct. 1449, 12 L. Ed. 2d 620 (1964).

16 U.S.—Lucas v. Forty-Fourth General Assembly of State of Colo., 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

Deviations between two districts

While a redistricting plan with total deviation of only 5.4% was sufficient as a whole, a deviation of 11.5% between two districts was too large and implementation of the plan was enjoined with respect to those districts.

R.I.—Holmes v. Farmer, 475 A.2d 976 (R.I. 1984).

17 U.S.—Swann v. Adams, 385 U.S. 440, 87 S. Ct. 569, 17 L. Ed. 2d 501 (1967).

18 U.S.—White v. Regester, 412 U.S. 755, 93 S. Ct. 2332, 37 L. Ed. 2d 314 (1973).

19 Alaska—Braun v. Borough, 193 P.3d 719 (Alaska 2008).

Idaho—Twin Falls County v. Idaho Com'n on Redistricting, 152 Idaho 346, 271 P.3d 1202 (2012).

Mass.—Mayor of Cambridge v. Secretary of Com., 436 Mass. 476, 765 N.E.2d 749 (2002).

Md.—In re 2012 Legislative Districting, 436 Md. 121, 80 A.3d 1073 (2013).

20 U.S.—Blackmoon v. Charles Mix County, 386 F. Supp. 2d 1108 (D.S.D. 2005).

Ark.—Riley v. Baxter County Election Com'n, 311 Ark. 273, 843 S.W.2d 831 (1992).

Idaho—Bingham County v. Idaho Com'n for Reapportionment, 137 Idaho 870, 55 P.3d 863 (2002).

21 U.S.—Brown v. Thomson, 462 U.S. 835, 103 S. Ct. 2690, 77 L. Ed. 2d 214 (1983).

More city districts

Redistricting plan did not violate equal protection by apparently favoring a city by packing it with districts containing barely more than the minimum constitutionally permissible population, absent a showing that the disparities did not result from an effort to accommodate legitimate policy concerns when redistricting.

Md.—Legislative Redistricting Cases, 331 Md. 574, 629 A.2d 646 (1993).

22 Idaho—Hellar v. Cenarrusa, 106 Idaho 586, 682 P.2d 539 (1984).

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16B C.J.S. Constitutional Law § 1438

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PART VI. Privileges and Immunities; Equal Protection

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b. Apportionment

§ 1438. Determination of population

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3658(1), 3658(5)

Unless the choice to include or exclude any particular class in the population is constitutionally forbidden, compliance with the rule that districts must have substantially equal population is to be measured by that population base, usually determined in accordance with the federal census.

Unless the choice to include or exclude any particular class in the population is constitutionally forbidden, such as where military members stationed in the area are excluded,[1] compliance with the rule that districts must have substantially equal population[2] is to be measured by that population base.[3] Reliance on the federal decennial census is a constitutionally permissible basis for the apportionment of a legislative body,[4] but it is not the required standard by which substantial population equivalency is to be measured.[5] The Fourteenth Amendment allows apportionment plans to use bases other than population but only when population figures are unavailable and the figures employed substantially approximate those that would have been derived from a census of the entire population.[6] Accordingly, registered voter figures may be used as the basis for the apportionment of

election districts, consistent with the Equal Protection Clause, only if the results substantially reflect results obtainable by the use of another permissible basis, such as total population.[7]

Once a constitutionally permissible apportionment base is chosen, equal protection would generally require that the apportionment base be applied uniformly to all people and throughout all districts.[8] A failure to exclude nonresident military personnel from the population base does not deny equal protection where there is not a reliable means of determining their number.[9]

Footnotes

1 Alaska—Egan v. Hammond, 502 P.2d 856 (Alaska 1972).
Exclusion of military personnel and students permissible
A legislative reapportionment plan that extracted nonresident military personnel, their dependents, and nonresident students from Hawaii's total population count did not violate the Equal Protection Clause; the plan was carried out with the aim of creating a population base that reflected Hawaii's permanent residents, it resulted from a comprehensive process free from any taint of invidious discrimination against minority groups, and by using servicemembers' chosen state for taxation, presuming their dependents to be nonresidents, and identifying students paying out-of-state tuition, it was implemented in such a way that the number of permanent residents in each district was as equal as was practicable.
U.S.—Kostick v. Nago, 960 F. Supp. 2d 1074 (D. Haw. 2013), judgment aff'd, 134 S. Ct. 1001, 187 L. Ed. 2d 849 (2014).

2 § 1436.

3 U.S.—Burns v. Richardson, 384 U.S. 73, 86 S. Ct. 1286, 16 L. Ed. 2d 376 (1966).

4 U.S.—Swann v. Adams, 263 F. Supp. 225 (S.D. Fla. 1967).
Me.—Opinion of the Justices, 255 A.2d 886 (Me. 1969).
Election cycle falling in same year as census
Use by a city of a 2001 apportionment plan, rather than a plan based on the 2010 census, for an August 23, 2011, city council election, due to the election cycle falling in the same year that federal decennial census data was published, did not violate voters' rights under the Equal Protection Clause; the fact that elections proceeded with a population imbalance toward the end of the decennial period was of no constitutional consequence, and it could take up to a year under state law for a redistricting ordinance to be enacted after receipt of the federal census data.
U.S.—Graves v. City of Montgomery, 807 F. Supp. 2d 1096 (M.D. Ala. 2011).

5 U.S.—Burns v. Richardson, 384 U.S. 73, 86 S. Ct. 1286, 16 L. Ed. 2d 376 (1966).

6 U.S.—Yelverton v. Driggers, 370 F. Supp. 612 (M.D. Ala. 1974); Bannister v. Davis, 263 F. Supp. 202 (E.D. La. 1966).

7 U.S.—Burns v. Richardson, 384 U.S. 73, 86 S. Ct. 1286, 16 L. Ed. 2d 376 (1966).
Cal.—Calderon v. City of Los Angeles, 4 Cal. 3d 251, 93 Cal. Rptr. 361, 481 P.2d 489 (1971).
Colo.—Hartman v. City and County of Denver, 165 Colo. 565, 440 P.2d 778 (1968).
Mass.—Opinion of the Justices, 353 Mass. 790, 230 N.E.2d 801 (1967).
Pa.—In re Penn Hills Tp., Allegheny County, 216 Pa. Super. 327, 264 A.2d 429 (1970).

8 Md.—DuBois v. City of College Park, 286 Md. 677, 410 A.2d 577 (1980).

9 Alaska—Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992), as modified on reh'g, (Mar. 12, 1993).

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16B C.J.S. Constitutional Law § 1439

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b. Apportionment

§ 1439. Use of political subdivision lines

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3658(7)

It is constitutionally valid to use political subdivision lines in establishing state legislative districts, so long as the principle that districts have substantially equal population is not violated, but residents of a particular political subdivision do not have a right to be in the same district.

It is constitutionally valid to use political subdivision lines when establishing state legislative districts so long as the resulting apportionment is based substantially on population.[1] While a desire to preserve the integrity of political subdivisions may justify an apportionment plan that departs from numerical equality,[2] if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, the principle of substantial equality is violated, the right of all citizens to cast an effective and adequately weighted vote is unconstitutionally impaired.[3]

While there should be compliance with a requirement in a state constitution against crossing subdivision lines when drawing districts, to the extent possible consistent with equal protection requirements,[4] the voters of a political subdivision that was

divided into a number of legislative districts do not constitute an identifiable group, for equal protection purposes,[5] and a reapportionment plan may divide a subdivision into a number of districts, to reduce population deviations among districts,[6] or avoid further fragmenting an adjoining borough.[7]

CUMULATIVE SUPPLEMENT

Cases:

Legitimate considerations that permit, under the Equal Protection Clause, deviation from equal population of legislative districts can include traditional districting principles such as compactness and contiguity, a state interest in maintaining the integrity of political subdivisions, or the competitive balance among political parties. U.S.C.A. Const.Amend. 14. Harris v. Arizona Independent Redistricting Com'n, 136 S. Ct. 1301 (2016).

Under the one person, one vote principle of the Equal Protection Clause, when drawing state and local legislative districts, states may deviate somewhat from perfect population equality to accommodate traditional districting objectives, such as preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographic compactness. U.S.C.A. Const.Amend. 14. Evenwel v. Abbott, 136 S. Ct. 1120 (2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).
As to the requirement of substantial equality of population, see § 1436.

2 U.S.—Mahan v. Howell, 410 U.S. 315, 93 S. Ct. 979, 35 L. Ed. 2d 320 (1973), opinion modified on other grounds, 411 U.S. 922, 93 S. Ct. 1475, 36 L. Ed. 2d 316 (1973); Abate v. Mundt, 403 U.S. 182, 91 S. Ct. 1904, 29 L. Ed. 2d 399 (1971).
Mich.—In re Apportionment of State Legislature—1982, 413 Mich. 96, 321 N.W.2d 565 (1982).

3 U.S.—Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964).

4 Tenn.—State ex rel. Lockert v. Crowell, 631 S.W.2d 702 (Tenn. 1982).
Accommodation achieved
Me.—In re Apportionment of House of Representatives, 315 A.2d 211 (Me. 1974), order amended on other grounds, 316 A.2d 508 (Me. 1974).

5 Fla.—Florida Senate v. Forman, 826 So. 2d 279 (Fla. 2002).
Haw.—Kawamoto v. Okata, 75 Haw. 463, 868 P.2d 1183 (1994).

6 Ark.—Taylor v. Clinton, 284 Ark. 170, 680 S.W.2d 98 (1984).
Idaho—Bonneville County v. Ysursa, 142 Idaho 464, 129 P.3d 1213 (2005).
Mass.—McClure v. Secretary of Com., 436 Mass. 614, 766 N.E.2d 847 (2002).

7 Alaska—In re 2001 Redistricting Cases, 44 P.3d 141 (Alaska 2002).

16B C.J.S. Constitutional Law § 1440

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PART VI. Privileges and Immunities; Equal Protection

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6. Equality of Voting Power

b. Apportionment

§ 1440. Multimember or at-large districts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3658(8)

Multimember or at-large districts, while not inherently unconstitutional, may result in minimizing the strength of some votes.

The Equal Protection Clause does not require single-member legislative districts.[1] Multimember districts in a legislative apportionment scheme are not per se unconstitutional.[2] Indeed, a totally at-large system of voting eliminates any defect in the system, viewed from a "one person, one vote" perspective.[3] Nevertheless, multimember and at-large districting schemes are subject to challenge where the circumstances of a particular case operate to minimize or cancel the voting strength of racial or political elements of the voting population.[4] Strict scrutiny is required of a classification of voters into both single-member and multimember districts, to remedy legislative redistricting plans that violated "whole-county provisions" of a state constitution, since this necessarily implicates the fundamental right to vote on equal terms.[5] A successful constitutional attack must be based on findings in a particular case that the plan in fact operates impermissibly to dilute the voting strength of an identifiable element of the voting population[6] and that members of the minority in question have less opportunity than do other residents to

participate in the political process and to elect legislators of their choice.[7] The standard of proof generally applicable to Equal Protection Clause cases applies when multimember districts are challenged, and the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose.[8]

Residency requirements for elected officials.

The "one person, one vote" requirement is not violated by an at-large election plan for a governmental unit that requires those elected to be residents of subdivisions within the unit.[9] Thus, an apportionment plan with residency requirements for officials elected at-large does not constitute a per se violation of "one person, one vote" requirements, although the actual operation of such a plan, as distinguished from its anticipated consequences, may provide the basis for a constitutional challenge.[10] A successful constitutional attack must be based on findings in a particular case that the plan, in fact, operates impermissibly to dilute the voting strength of an identifiable element of the voting population.[11]

CUMULATIVE SUPPLEMENT

Cases:

Where state legislative apportionment scheme has population deviation of less than 10%, scheme will constitute invidious discrimination under Equal Protection Clause only if it can be shown that designedly or otherwise, multi-member constituency apportionment scheme, under circumstances of particular case, would operate to minimize or cancel out voting strength of racial or political elements of voting population. U.S. Const. Amend. 14. National Association for Advancement of Colored People v. Merrill, 939 F.3d 470 (2d Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Burns v. Richardson, 384 U.S. 73, 86 S. Ct. 1286, 16 L. Ed. 2d 376 (1966).

2 U.S.—Whitcomb v. Chavis, 403 U.S. 124, 91 S. Ct. 1858, 29 L. Ed. 2d 363 (1971); Burns v. Richardson, 384 U.S. 73, 86 S. Ct. 1286, 16 L. Ed. 2d 376 (1966); Fortson v. Dorsey, 379 U.S. 433, 85 S. Ct. 498, 13 L. Ed. 2d 401 (1965).
Md.—Matter of Legislative Districting of State, 299 Md. 658, 475 A.2d 428 (1984).
W. Va.—State ex rel. Cooper v. Tennant, 229 W. Va. 585, 730 S.E.2d 368 (2012).

3 U.S.—City of Mobile, Ala. v. Bolden, 446 U.S. 55, 100 S. Ct. 1490, 64 L. Ed. 2d 47 (1980).

4 U.S.—Chapman v. Meier, 420 U.S. 1, 95 S. Ct. 751, 42 L. Ed. 2d 766 (1975); Whitcomb v. Chavis, 403 U.S. 124, 91 S. Ct. 1858, 29 L. Ed. 2d 363 (1971); Fortson v. Dorsey, 379 U.S. 433, 85 S. Ct. 498, 13 L. Ed. 2d 401 (1965).
Md.—Matter of Legislative Districting of State, 299 Md. 658, 475 A.2d 428 (1984).
Congressional power
Congress' power under the Fourteenth Amendment clearly extends to protecting any group of persons invidiously discriminated against by state law, including groups identifiable by ethnic, national origin, or linguistic characteristics, and the purposefully discriminatory maintenance of a vote-diluting at-large districting scheme comes within the purview of that protection.
U.S.—U.S. v. Uvalde Consol. Independent School Dist., 625 F.2d 547 (5th Cir. 1980).
A.L.R. Library
Equal Protection and Due Process Clause Challenges Based on Racial Discrimination—Supreme Court Cases, 172 A.L.R. Fed. 1.

5 N.C.—Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002).

6 U.S.—Dallas County, Alabama v. Reese, 421 U.S. 477, 95 S. Ct. 1706, 44 L. Ed. 2d 312 (1975); Burns v. Richardson, 384 U.S. 73, 86 S. Ct. 1286, 16 L. Ed. 2d 376 (1966).

7 U.S.—Chapman v. Meier, 420 U.S. 1, 95 S. Ct. 751, 42 L. Ed. 2d 766 (1975).

8 U.S.—Rogers v. Lodge, 458 U.S. 613, 102 S. Ct. 3272, 73 L. Ed. 2d 1012 (1982).

9 U.S.—Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo., 397 U.S. 50, 90 S. Ct. 791, 25 L. Ed. 2d 45 (1970); Dusch v. Davis, 387 U.S. 112, 87 S. Ct. 1554, 18 L. Ed. 2d 656 (1967); Fortson v. Dorsey, 379 U.S. 433, 85 S. Ct. 498, 13 L. Ed. 2d 401 (1965).

10 U.S.—Baker v. Regional High School Dist. No. 5, 432 F. Supp. 535 (D. Conn. 1977).

11 U.S.—Dallas County, Alabama v. Reese, 421 U.S. 477, 95 S. Ct. 1706, 44 L. Ed. 2d 312 (1975).

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PART VI. Privileges and Immunities; Equal Protection

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b. Apportionment

§ 1441. Weighted or preferential voting

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3658(10)

A weighted voting system may not violate the "one person, one vote" rule except in the case of a special district.

The principle of "one person, one vote" is violated when the power of a representative to affect the passage of legislation by his or her own vote does not roughly correspond to the proportion of the population in the constituency.[1] A system of allocating votes on a county board of supervisors by weighted representation, each town having one representative whose vote was weighted according to the town's population, does not violate equal protection, where the deviation compared to population was minimal, and no one representative controlled the majority of the board's weighted votes.[2]

In accordance with the rule that the "one person, one vote" rule does not apply to special purpose local governments,[3] a weighted voting system for electing the managing board of a special-purpose business improvement district, which affected property owners disproportionately, guaranteeing that not less than a majority of its members shall represent owners, bore a reasonable relationship to the purposes of the board, and thus did not violate equal protection.[4]

A preferential method of voting for a multimember council, under which voters designated candidates in order of preference on their ballots, and ballots cast for candidates who had more than enough votes to be elected or for candidates who had too few votes to be elected were transferred to the candidate who was next designated in the voter's order of preference, does not necessarily violate equal protection.[5]

Footnotes

1 N.Y.—Iannucci v. Board of Sup'rs of Washington County, 20 N.Y.2d 244, 282 N.Y.S.2d 502, 229 N.E.2d 195 (1967).

2 U.S.—Roxbury Taxpayers Alliance v. Delaware County Bd. of Sup'rs, 80 F.3d 42 (2d Cir. 1996).

3 § 1443.

4 U.S.—Kessler v. Grand Cent. Dist. Management Ass'n, Inc., 158 F.3d 92 (2d Cir. 1998).

5 Mass.—McSweeney v. City of Cambridge, 422 Mass. 648, 665 N.E.2d 11 (1996).

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§ 1442. Bodies, officers, and elections subject to rule

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3659

Generally, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause requires that each qualified voter be given an equal opportunity to participate in that election.

Whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause requires that each qualified voter be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.[1] There is no discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election; the decision of a state to select a particular official by popular vote is a strong enough indication that the choice is an important one as to warrant the application of the "one person, one vote" principle.[2]

The "one person, one vote" mandate applies only to elected officials, and is thus inappropriate where members of a clearly administrative authority are appointed,[3] although there is also authority that there is no need to determine whether appointed officials, such as on a zoning commission, perform functions that may be better defined as administrative rather than legislative.[4] In any event, the "one man, one vote" requirement does not extend to nongoverning bodies.[5]

The "one person, one vote" principle may be said to apply to votes cast in a referendum, at least where all the voters have substantially identical interests in the adoption of the proposal at issue.[6] Similarly, under the constitutional principle, there is no distinction between voting on representatives in the legislature and voting on constitutional amendments.[7] However, the "one person, one vote" rule is not applicable to a constitutional convention, which neither legislates nor governs but presents to the electorate for approval proposed changes in the constitution,[8] and it is not violative of the rule to provide for both elected and appointed delegates to a constitutional convention.[9]

Judicial officers are not subject to the "one person, one vote" principle,[10] and the doctrine does not apply to a board of bar commissioners even though it was organized under the aegis of legislation.[11]

Education is a vital governmental function, so that if officials who are concerned with the educational process are elected, the "one person, one vote" principle applies.[12]

Footnotes

1 U.S.—Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo., 397 U.S. 50, 90 S. Ct. 791, 25 L. Ed. 2d 45 (1970).
Mass.—Donahue v. Secretary of the Com., 403 Mass. 363, 530 N.E.2d 792 (1988).
Md.—DuBois v. City of College Park, 286 Md. 677, 410 A.2d 577 (1980).
Tenn.—Bradley v. State ex rel. Haggard, 222 Tenn. 535, 438 S.W.2d 738 (1969).
As to rules applicable to multimember districts, see § 1440, and weighted voting, see § 1441.
As to local governments, see § 1443.

2 U.S.—Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo., 397 U.S. 50, 90 S. Ct. 791, 25 L. Ed. 2d 45 (1970).

3 U.S.—Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo., 397 U.S. 50, 90 S. Ct. 791, 25 L. Ed. 2d 45 (1970); Sailors v. Board of Ed. of Kent County, 387 U.S. 105, 87 S. Ct. 1549, 18 L. Ed. 2d 650 (1967).
Ill.—People ex rel. Hanrahan v. Caliendo, 50 Ill. 2d 72, 277 N.E.2d 319 (1971).
Nev.—Clark County v. City of Las Vegas, 94 Nev. 74, 574 P.2d 1013 (1978).
Vt.—City of St. Albans v. Northwest Regional Planning Com'n, 167 Vt. 466, 708 A.2d 194 (1998).
Highway commissioner
S.C.—Moore v. Wilson, 296 S.C. 321, 372 S.E.2d 357 (1988).

4 Ga.—Ramsbottom Co. v. Bass/Zebulon Roads Neighborhood Ass'n, 273 Ga. 798, 546 S.E.2d 778 (2001).

5 U.S.—Education/Instruccion, Inc. v. Moore, 503 F.2d 1187 (2d Cir. 1974).
Ala.—Opinion of the Justices, 294 Ala. 571, 319 So. 2d 699 (1975).
Government-regulated corporation
U.S.—Davis v. American Tel. & Tel. Co., 478 F.2d 1375 (2d Cir. 1973).
Off-track betting board
U.S.—Massachusetts Public Interest Research Group v. Secretary of Com., 375 Mass. 85, 375 N.E.2d 1175 (1978).

6 Mass.—Massachusetts Public Interest Research Group v. Secretary of Com., 375 Mass. 85, 375 N.E.2d 1175 (1978).
N.J.—New Jersey State AFL-CIO v. State Federation of Dist. Boards of Ed., 93 N.J. Super. 31, 224 A.2d 519 (Ch. Div. 1966).

7 N.M.—State ex rel. Witt v. State Canvassing Bd., 1968-NMSC-017, 78 N.M. 682, 437 P.2d 143 (1968).

8 Ill.—Livingston v. Ogilvie, 43 Ill. 2d 9, 250 N.E.2d 138 (1969).

La.—Bates v. Edwards, 294 So. 2d 532 (La. 1974).

9 La.—Bates v. Edwards, 294 So. 2d 532 (La. 1974).

Pa.—Stander v. Kelley, 433 Pa. 406, 250 A.2d 474 (1969).

10 U.S.—Gilday v. Board of Elections of Hamilton County, Ohio, 472 F.2d 214, 69 Ohio Op. 2d 37 (6th Cir. 1972).

La.—Johnson v. State, 965 So. 2d 866 (La. Ct. App. 1st Cir. 2007), writ denied, 967 So. 2d 507 (La. 2007).

Pa.—Cavanaugh v. Schaeffer, 65 Pa. Commw. 620, 444 A.2d 1308 (1982).

11 Ala.—In re Griffith, 283 Ala. 527, 219 So. 2d 357 (1969).

12 U.S.—Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo., 397 U.S. 50, 90 S. Ct. 791, 25 L. Ed. 2d 45 (1970).

Regional school committee

The mere fact that a regional district school committee was formed as a result of a voluntary agreement among towns did not alter the determination that the committee was a general governmental body subject to principles of one person, one vote.

R.I.—O'Connors v. Helfgott, 481 A.2d 388, 19 Ed. Law Rep. 1096 (R.I. 1984).

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§ 1443. Bodies, officers, and elections subject to rule—Local government

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3658(10)

The constitutional requirement of "one person, one vote" applies to local elective legislative bodies exercising general governmental powers but not to elections of members of special districts.

The constitutional requirement of "one person, one vote" applies to local elective legislative bodies exercising general governmental powers.[1] The Fourteenth Amendment forbids the election of local government officials from districts of disparate population;[2] it requires that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population.[3]

When considering the application of the one person, one vote principle to residents of units of local governments exercising general governmental powers, the subject or purpose of the election is without constitutional significance; it also applies to an electoral determination regarding which local governmental subdivisions shall exercise general governmental powers.[4]

Special purpose local governments.

The "one person, one vote" requirement does not apply to special purpose local governments or districts if their decisions disproportionately affect different groups.[5] A conclusion whether a special district is subject to the "one person, one vote" doctrine requires a threshold determination whether that body performs governmental functions[6] and depends on such factors as its purpose, the number and exact nature of its functions, and the manner in which they are exercised; if the principal purpose of the district is to provide services that can be provided by a private or quasipublic corporation, and if, in the accomplishment of this purpose, it does not exercise general government powers, it is not subject to the "one person, one vote" rule.[7] On the other hand, the power to vote for directors of an irrigation district may not be limited to landowners, where the district was principally engaged in providing domestic water to residents of a city, and a large amount of the district's revenue came from charges for domestic water.[8]

Footnotes

1 U.S.—Board of Estimate of City of New York v. Morris, 489 U.S. 688, 109 S. Ct. 1433, 103 L. Ed. 2d 717 (1989).
Cal.—Burrey v. Embarcadero Mun. Improvement Dist., 5 Cal. 3d 671, 97 Cal. Rptr. 203, 488 P.2d 395 (1971).
Haw.—Citizens for Equitable and Responsible Government v. County of Hawaii, 108 Haw. 318, 120 P.3d 217 (2005), amended on reconsideration in part, (Sept. 22, 2005).
Md.—McMillan v. Love, 379 Md. 551, 842 A.2d 790 (2004).
Minn.—Hanlon v. Towey, 274 Minn. 187, 142 N.W.2d 741 (1966).

2 U.S.—Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968).
Board of estimate
Apportionment of New York City Board of Estimate which gave each borough president one vote, regardless of the borough's population, violated equal protection; while the fact that at-large members, who were persons elected to citywide offices, held a one-vote majority on board should be considered, this did not preclude a finding that the apportionment of the board was unconstitutional, and the large deviation in sizes of election districts (consisting of each borough) was not justified by any governmental interest.
U.S.—Board of Estimate of City of New York v. Morris, 489 U.S. 688, 109 S. Ct. 1433, 103 L. Ed. 2d 717 (1989).

3 U.S.—Avery v. Midland County, Tex., 390 U.S. 474, 88 S. Ct. 1114, 20 L. Ed. 2d 45 (1968).
Mass.—Donahue v. Secretary of the Com., 403 Mass. 363, 530 N.E.2d 792 (1988).
Mich.—In re Advisory Opinion re Constitutionality of P.A.1966, No. 261, 380 Mich. 736, 158 N.W.2d 497 (1968).

4 Del.—Mayor and Council of City of Dover v. Kelley, 327 A.2d 748 (Del. 1974).

5 U.S.—Ball v. James, 451 U.S. 355, 101 S. Ct. 1811, 68 L. Ed. 2d 150 (1981); Associated Enterprises, Inc. v. Toltec Watershed Imp. Dist., 410 U.S. 743, 93 S. Ct. 1237, 35 L. Ed. 2d 675 (1973); Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 93 S. Ct. 1224, 35 L. Ed. 2d 659 (1973).
Vt.—In re Reapportionment of Towns of Hartland, Windsor and West Windsor, 160 Vt. 9, 624 A.2d 323 (1993).
As to weighted voting in this situation, see § 1441.
Sanitary district
Ill.—Eastern v. Canty, 75 Ill. 2d 566, 27 Ill. Dec. 752, 389 N.E.2d 1160 (1979).
Community development district
Fla.—State v. Frontier Acres Community Development Dist. Pasco County, 472 So. 2d 455 (Fla. 1985).
Community improvement district
U.S.—Day v. Robinwood West Community Improvement Dist., 693 F. Supp. 2d 996 (E.D. Mo. 2010).
Ditch association

Voting for ditch association officers, based proportionally on water rights or ditch interests, reasonably reflected the relative risks and benefits and burdens of ditch operations and was not subject to the one person, one vote rule.

N.M.—Wilson v. Denver, 1998-NMSC-016, 125 N.M. 308, 961 P.2d 153 (1998).

6 Iowa—Polk County Bd. of Sup'rs v. Polk Commonwealth Charter Com'n, 522 N.W.2d 783 (Iowa 1994).

Md.—McMillan v. Love, 379 Md. 551, 842 A.2d 790 (2004).

7 Cal.—Thompson v. Board of Directors of Turlock Irr. Dist., 247 Cal. App. 2d 587, 55 Cal. Rptr. 689 (5th Dist. 1967).

Power of assessment

Power of a flood control district to levy and collect special assessments does not create such general governmental authority as will invoke the strict demands of the "one-person, one-vote" principle.

U.S.—Ball v. James, 451 U.S. 355, 101 S. Ct. 1811, 68 L. Ed. 2d 150 (1981).

Regional planning commission

Appointment of one commissioner of a regional planning commission as a representative of each participating municipality does not violate equal protection where the commission did not perform such governmental functions as levying taxes or realigning boundaries of member municipalities.

Vt.—City of St. Albans v. Northwest Regional Planning Com'n, 167 Vt. 466, 708 A.2d 194 (1998).

Irrigation district

Irrigation district which was not empowered to impose property or sales taxes, enact laws governing the conduct of citizens, or administer normal government functions did not possess general governmental powers so as to require the imposition of the "one-person, one-vote rule."

Wash.—Foster v. Sunnyside Valley Irr. Dist., 102 Wash. 2d 395, 687 P.2d 841 (1984).

8 Idaho—Johnson v. Lewiston Orchards Irrigation Dist., 99 Idaho 501, 584 P.2d 646 (1978).

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